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United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

JOSEPH E. WISE and LUCIA J. WISE,

Appellants,

vs.

CORNELIUS C. WATTS and DABNEY C. T. DAVIS, Jr., JAMES E. BOULDIN, JENNIE N. BOULDIN, DAVID W. BOULDIN and HELEN LEE BOULDIN,

Appellees,

and

CORNELIUS C. WATTS and DABNEY C. T. DAVIS, Jr.,

Appellants,

vs.

JOSEPH E. WISE and MARGARET W. WISE,

Appellees,

and

JAMES E. BOULDIN, JENNIE N. BOULDIN, DAVID W. BOULDIN and HELEN LEE BOULDIN,

Appellants,

vs.

JOSEPH E. WISE and MARGARET W. WISE,

Appellees,

and

SANTA CRUZ DEVELOPMENT COMPANY, a Corporation,

Appellant,

vs.

CORNELIUS C. WATTS, DABNEY C. T. DAVIS, Jr., JOSEPH E. WISE, MARGARET W. WISE, JENNIE N. BOULDIN, DAVID W. BOULDIN, and HELEN LEE BOULDIN,

Appellees.

VOLUME I.

(Pages 1 to 320, Inclusive.)

Upon Appeals from the United States District Court for the District of Arizona.

JAN 20 1916



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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JOHN H. CAMPBELL, Esquire, Tucson, Arizona. [1\*]

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\*Page-number appearing at foot of page of original certified Record.

2      *Joseph E. Wise and Lucia J. Wise vs.*

*In the District Court of the United States in and for  
the District of Arizona.*

E-5—TUCSON.

CORNELIUS C. WATTS and DABNEY C. T.  
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,  
JAMES E. BOULDIN, JENNIE N.  
BOULDIN, JOSEPH E. WISE, LUCIA J.  
WISE, MARGARET W. WISE JESSE H.  
WISE, DAVID W. BOULDIN, HELEN  
LEE BOULDIN, M. I. CARPENTER,  
PATRICK C. IRELAND, IRELAND  
GRAVES, ANNA R. WILCOX, ELD-  
REDGE I. HURT and W. G. RIFENBURG,  
Defendants.

United States of America,  
State of Arizona,—ss.

Be it remembered, that in the District Court of the United States for the District of Arizona, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Action commenced by filing of bill June 23, 1914.  
In amended pleadings paragraph numbers of originals are preserved.

**Plaintiff's Amended Bill of Complaint.**

Filed March 26, 1915.

To the Honorable, the Judge of the District Court of the United States in and for the District of Arizona:

Cornelius C. Watts, a citizen of the State of West Virginia, residing at Charleston in that State, and Dabney C. T. Davis, Jr., a citizen of the State of West Virginia, residing at Lewisburg in that State, bring this, their blll, against Santa Cruz Development Company, a corporation organized and existing under the laws of the [1a] State of Arizona; Jennie N. Bouldin, and James E. Bouldin, her husband, citizens of the State of Missouri, residing at Kansas City in that State; Margaret W. Wise and Jesse H. Wise, her husband, citizens of the State of Pennsylvania, residing at Waynesburg in that State; and John Bouldin and Mary Bouldin, citizens of the State of Texas, residing at Austin in that State; W. G. Rifenburg, a citizen of the State of California, residing at San Diego, California, and Joseph E. Wise and Lucia J. Wise, his wife, citizens of the State of Arizona, and residing at Calabasas, in that State.

And thereupon your orators complain and say:

1. By the sixth section of an act entitled "An Act to Confirm certain private land claims in the Territory of New Mexico," approved June 21, 1860, the Congress of the United States provided:

"That it shall be lawful for the heirs of Luis Maria Baca, who make claim to the same tract

of land as is claimed by the town of Las Vegas, to select instead of the land claimed by them, an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located by them in square bodies not exceeding five in number; and it shall be the duty of the Surveyor General of New Mexico to make survey and location of the land so selected by the said heirs of Baca when thereunto required by them; provided, however, that the right hereby granted shall continue in force for three years from the passage of this act, and no longer."

2. On June 17, 1863, pursuant to the provisions of the said act of June 17, 1860, the heirs of Luis Maria Baca by John S. Watts as their attorney selected and located by a description with reference to natural objects and by courses and distances as required by the regulations of the General Land Office a tract or parcel of land as follows:

"Commencing at a point one mile and a half from the [2] base of the Salero Mountain in a direction North forty-five degrees East of the highest point of said mountain, running thence from said beginning point West twelve miles, thirty-six chains and forty-four links; thence South twelve miles, thirty-six chains and forty-four links; thence East twelve miles, thirty-six chains and forty-four links; and thence North twelve miles, thirty-six chains and forty-four links to the place of beginning."

the said tract or parcel of land being known and

designated as Baca Float No. 3, and being then situated in that portion of New Mexico included by Act of Congress approved February 24, 1863, in the Territory of Arizona and which tract of land is now in the county of Santa Cruz, in the State of Arizona.

3. Thereafter the Surveyor General of New Mexico duly approved said selection and location and forwarded the same with his approval thereof to the General Land Office at Washington, D. C., for the action thereon of the Commissioner of the General Land Office; and after due consideration and examination the said Commissioner on April 9, 1864, approved said selection and location and ordered it to be surveyed.

4. No survey was made until the year 1905, in which year the said land was duly surveyed by one Contzen under a contract with the Surveyor General of Arizona, and the plat and field notes of such survey, with the certificate of said Surveyor General approving the same as complying with the requirements of the land office, were, on or about November 23, 1906, forwarded to the General Land Office at Washington, D. C., where they were examined and approved.

5. On or about May 1, 1864, the heirs of Luis Maria Baca sold and conveyed Baca Float No. 3, as hereinbefore particularly described, to John S. Watts by deed duly executed and acknowledged and recorded in the office of the [3] clerk of the Probate Court for Santa Fe County, New Mexico, May 14, 1864, in book C, pages 551 to 555; in the office of the clerk of the Probate Court for San Miguel

6        *Joseph E. Wise and Lucia J. Wise vs.*

County, New Mexico, August 24, 1866, in book 3, pages 51 to 58; in the office of the county recorder of Pima County, Arizona, May 25, 1894, in book 26 of Deeds of Real Estate at page 547 et seq., and June 13, 1894, in the same book at page 364 et seq., whence it was transcribed into the records of the county recorder of Santa Cruz County, Arizona, in book 2 of Deeds of Real Estate (Transcribed) at page 142, *et sequitur*.

“6. On or about January 8, 1870, the said John S. Watts sold and conveyed said Baca Float No. 3 to Christopher E. Hawley by deed duly executed and acknowledged and recorded May 9, 1885, in the office of the county recorder of Pima County, Arizona, in book 13 of Deeds of Real Estate at page 66, *et sequitur*, whence it was transcribed into the records of the county recorder’s office of Santa Cruz County, Arizona, in book 1, of Deeds of Real Estate (Transcribed) at page 582 and a copy of which deed marked exhibit “A” is hereto attached and by reference made a part hereof.”

7. On or about April 30, 1866, the said John S. Watts had applied to the Commissioner of the General Land Office for leave to amend the description by metes and bounds of said Baca Float No. 3, so that the same should read as follows:

Commencing at a point 3 miles west by south from the building known as the Hacienda de Santa Rita, running thence from said beginning point north 12 miles 36 chains and 44 links, thence east 12 miles 36 chains and 44 links, thence south 12 miles 36 chains and 44 links,

thence west 12 miles 36 chains and 44 links to the place of beginning. [4]

under the belief that the said change was simply an amendment of the selection and location as made June 17, 1863, and could be made notwithstanding that the three years within which the selection and location was required by the act of June 21, 1860, to be made had expired and the Commissioner of the General Land Office acting under the same belief attempted to permit the change to be made. From May 21, 1866, when the Commissioner of the General Land Office made the order by which he purported to allow the attempted amendment of the description by metes and bounds of Baca Float No. 3, until July 25, 1899, when the Secretary of the Interior finally decided that the Commissioner of the General Land Office was without authority to permit such attempted amendment of the description by metes and bounds of Baca Float No. 3, and that the grant claimants must abide by the description by metes and bounds given in the selection and location of June 17, 1863, all parties interested, including the land office, believed that Baca Float No. 3 was described by the metes and bounds of the so-called amended location of 1866. Prior to July 25, 1899, no survey of the Float had been made by the Government and consequently no actual metes and bounds of said Float had been located on the ground to determine the actual boundaries of said Float.

8. The said John S. Watts intended to and did convey to Christopher E. Hawley by the deed of

January 8, 1870, exhibit "A," Baca Float No. 3, as the same is described in paragraph 2 hereof as appears by the express terms of said deed, that is, that the said John S. Watts "has remised, released and quitclaimed, and by these presents do remise, release and quitclaim" unto the said Christopher E. Hawley [5] "all that certain tract, piece or parcel of land, situate, lying and being in the Santa Rita Mountains in the Territory of Arizona, U. S. A., containing one hundred thousand acres, be the same more or less; granted to the said heirs of Luis Maria Cabeza de Baca by the United States and by the heirs conveyed to the party of the first part" (said John S. Watts) "by deed dated on the 1st day of May, 1864. \* \* \* The said tract of land being known as location No. 3, of the Baca Series" and the description by metes and bounds which have been omitted and stars substituted in its place was used under the mistaken belief existing at the time said deed was made as to the metes and bounds of the Float.

9. \* \* \* On or about March 2, 1863, the said John S. Watts executed and delivered to one William Wrightson, a title bond for said Baca Float No. 3, and prior to January 8, 1870, the said Christopher E. Hawley had become entitled to and was in possession of said title bond and entitled thereunder to have a fee simple title to Baca Float No. 3 as described in paragraph 2 hereof, made to him and the plaintiffs, as successors in title to said Hawley, now own and possess said title bond.

(Paragraph 10 omitted.)

11. On or about May 30, 1871, the heirs of Luis

Maria Baca executed a deed to the said John S. Watts, which was duly recorded in Santa Ana County, New Mexico, and wherein and whereby the said heirs ratified and confirmed the title made by them and by their "attorney Tomas Cabeza de Baca to John S. Watts, his heirs and assigns on the 1st day of May, 1864," for the lands described [6] in location number three situate in Arizona Territory, containing 99,289.39 acres, the boundaries of which are set forth and described in said deed, and wherein and whereby the "said heirs of the said Luis Maria Baca, dec'd \* \* \* relinquish and quitclaim to said John S. Watts, his heirs and assigns all their right, title and interest in all the lands in said deed of May 1st, 1864, mentioned and described." This deed inured to the benefit of the said Christopher E. Hawley and cured any defect that might have existed from the manner in which the deed to John S. Watts of May 1st, 1864, was executed on behalf of some of the heirs of Luis Maria Baca. The persons executing the deeds of May, 1864, and May 30, 1871, were all the heirs of Luis Maria Baca.

12. On or about January 14, 1878, certain persons claiming to be heirs of Luis Maria Baca executed to David W. Bouldin two instruments purporting to be quitclaim deeds in the same words and figures, which were recorded March 25, 1885, in Pima County, Arizona, in book 13 of Deeds of Real Estate at pages 1 and 6, and in Santa Cruz County, Arizona, in book 1 of Deeds of Real Estate (Transcribed) at pages 531 and 536, purporting to convey a two-thirds interest in Baca Float No. 3 as described in paragraph 2

hereof, a copy of one of which instruments is hereto attached, marked exhibit "B" and by reference made a part hereof; and on or about September 30, 1884, certain persons claiming to be the heirs of John S. Watts executed to David W. Bouldin an instrument purporting to be a quitclaim deed recorded without acknowledgment March 25, 1885, in Pima County, Arizona, in book 13 of Deeds of Real Estate at page 13 and re-recorded with acknowledgment April [7] 18, 1888, in book 14, Real Estate and Mortgages, page 597, and in Santa Cruz County, Arizona, in book 1 of Deeds of Real Estate (Transcribed) at page 542, which purported to convey a two-thirds interest in Baca Float No. 3, as described in paragraph 2 hereof, a copy of which last-mentioned instrument is hereto attached, marked exhibit "C" and by reference made a part hereof. By the title bond hereinbefore referred to, all of the heirs of Luis Maria Baca and of John S. Watts held the title, if any remained in them in view of the deeds of May 1, 1864, and May 30, 1871, and of January 8, 1870, hereinbefore referred to, in trust for the said Christopher E. Hawley and his successors in title including the plaintiffs. The said David W. Bouldin never perfected the title to Baca Float No. 3, as described in paragraph 2 hereof in the heirs of Luis Maria Baca or in any manner or to any extent performed the said agreements on his part.

13. Prior to June 8, 1885, John C. Robinson had become the owner of the land conveyed by John S. Watts to Christopher E. Hawley, by deed of January 8, 1870, referred to in paragraph 6 hereof, and

on or about June 8, 1885, the said Robinson entered into an agreement with the said David W. Bouldin wherein and whereby the said Bouldin undertook to carry out the order of the Commissioner of the General Land Office, dated March 12, 1885, by which the said Commissioner undertook to authorize the said Robinson to relocate the said Baca Float No. 3, and wherein and whereby the said Robinson agreed that the said David W. Bouldin should have a half interest in the land so relocated. On or about June 15, 1887, the Secretary of the Interior finally decided that the said order of the Commissioner [8] of the General Land Office of March 12, 1885, was without authority and therefore void. The said agreement between the said Robinson and the said David W. Bouldin was, in its inception and at all times, impossible of performance by the said David W. Bouldin and void, and the said David W. Bouldin never could carry out said agreement on his part and never performed any part thereof, and the said David W. Bouldin never became entitled to a half or any interest under the said agreement in any land whatever.

14. On or about October 6, 1887, the said David W. Bouldin executed an instrument in the form of a mortgage which was recorded in Pima County, Arizona, October 12, 1887, in 7 of Mortgages, at page 475, and in Santa Cruz County, Arizona, in book 1 of Mortgages (Transcribed) at 409, wherein and whereby the said David W. Bouldin undertook and purported to convey to the defendant W. G. Rifenburg 12,500 acres in the northwest quarter of Baca

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Float No. 3 according to the survey of said Float by George J. Roskruge, county surveyor of Pima County, Arizona, in September, 1887, which survey is understood to have followed the metes and bounds of the attempted amended location referred to in paragraph 7 hereof, to secure a promissory note for \$5,000, payable in twelve months thereafter with one per cent per month interest and five per cent attorney's fee. At the time he attempted to make such mortgage the said David W. Bouldin had no other or better title than was conveyed to him by the instruments particularly described in paragraph 12 and 13 hereof.

15. On or about October 16, 1888, the said David W. Bouldin and his wife executed an instrument in the form of [9] a deed which was recorded May 20, 1889, in Pima County, Arizona, in book 21 of Deeds of Real Estate, at page 134, and in Santa Cruz County, Arizona, in book 1 of Deeds of Real Estate (Transcribed), at page 327, wherein and whereby the grantors undertook and purported to convey to their sons, David W. Bouldin, Jr., and Powhatan W. Bouldin, an undivided half interest in the tract or parcel of land situate in Pima County, Arizona, described by the metes and bounds of the attempted amended location, referred to in paragraph 7 hereof. At the time he attempted to make such deed, the said David W. Bouldin had no other or better title than was conveyed to him by the instruments particularly described in paragraphs 12 and 13 hereof.

16. On or about June 28, 1892, the said John E. C. Robinson executed an agreement which was re-

corded August 23, 1892, in Pima County, Arizona, in book 23 of Deeds of Real Estate, at page 568; and in Santa Cruz County Arizona, in book 2 of Deeds of Real Estate (Transcribed), at page 461, and wherein and whereby it is recited:

“Whereas on the eighth day of June, 1885, John C. Robinson by his attorney in fact James Eldridge and David W. Bouldin for himself entered into an agreement for their equal and undivided ownership title and interest of all that tract or parcel of land known as Baca Float No. 3 situated in Pima County, Arizona Territory, and whereas we now desire to avoid all possible questions of difference that might arise in connection therewith, and for the full and perfect agreement, concerning said interest, and whereas the said David W. Bouldin has conveyed by deed the undivided half interest in and to said tract or parcel of land to his sons Powhatan W. Bouldin and James E. Bouldin,”

—and wherein and whereby the said John C. Robinson and the said Powhatan W. Bouldin and James E. Bouldin by the said David W. Bouldin as their attorney in fact undertook and purported “for the carrying out of said agreement of [10] June eighth 1885” to divide Baca Float No. 3 between the parties to said deed, one-half to the said John C. Robinson and one-half to the said Powhatan W. Bouldin and James E. Bouldin, and described the land by metes and bounds of the attempted amended location, referred to in paragraph 7 hereof, and said

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instrument provided that the mortgage described in paragraph 14 hereof should not in any wise attach to the interest of the said Robinson in said property directly or indirectly, but that whatever legal responsibility attaches to said mortgage was thereby assumed by the said Powhatan W. Bouldin and James E. Bouldin. The agreement referred to in this paragraph was, on its face and by its express terms, made on the sole consideration of the agreement of June 8, 1885, described in paragraph 13 hereof, which said agreement was impossible to be performed by the said David W. Bouldin, as hereinbefore set forth, and said agreement was made under a mutual mistake of fact, without consideration and therefore void.

17. Allege upon information and belief that David W. Bouldin, Jr., died intestate on or about May 21, 1889, and thereafter and on or about August 23, 1892, the said David W. Bouldin executed an instrument in the form of a deed which was recorded August 24, 1892, in Pima County, Arizona, in book 23 of Deeds of Real Estate, at page 592, and in Santa Cruz County, Arizona, in book 2 of Deeds of Real Estate (Transcribed) at page 465, wherein and whereby the said David W. Bouldin undertook and purported to convey to his sons Powhatan W. Bouldin and James E. Bouldin, all his right, title and interest in and to Baca Float No. 3, describing it by the metes and bounds of the attempted amended location described in paragraph 7 hereof. At the time he made the [11] deed mentioned in this paragraph the said David W. Bouldin had no other

or better title to the land sought to be conveyed than was conveyed to him by the instruments described in paragraphs 12, 13 and 16 hereof.

18. On or about November 19, 1892, the said John C. Robinson executed an instrument in the form of a deed which was recorded December 27, 1892, in Pima County, Arizona, in book 23 of Deeds of Real Estate, at page 675, and which recited the instrument of June 28, 1892, described in paragraph 16 hereof, and wherein and whereby said John C. Robinson undertook and purported to convey to the said Powhatan W. Bouldin and James E. Bouldin one-half of Baca Float No. 3 by the following description:

“Beginning at a point three (3) miles west by south from the building known as the Hacienda de Santa Rita running thence north six miles, eighteen chains and twenty-two links; running thence east twelve miles, thirty-six chains and forty-four links; running thence south six miles, eighteen chains and twenty-two links; running thence west twelve miles, thirty-six chains and forty-four links to the place of beginning. The said tract of land bounded and described in the sentence immediately foregoing this being the northern half of the tract known as Location number three (3) of the Baca series.”

The instrument referred to in this paragraph was, by its express terms, made solely in order that each of the parties to the instrument of June 28, 1892, referred to in paragraph 16 hereof, might hold a half

of the land sought to be conveyed in severalty and falls with said instrument of June 28, 1892; \* \* \* On or about November 12, 1892, David W. Bouldin as attorney in fact for Powhatan W. Bouldin and Lucy Bouldin, his wife, and James E. Bouldin, quitclaimed to John C. Robinson the south half of the foregoing tract of land. [12]

19. Whatever interest the said Powhatan W. Bouldin and James E. Bouldin took by reason of the foregoing instruments is now vested one-half in the defendant, Jennie N. Bouldin, and one-half in the defendants, John Bouldin and Mary Bouldin, who are infants under the age of twenty-one years.

20. On or about February 7, 1894, the said John C. Robinson gave a power of attorney to S. A. M. Syme to do whatever was necessary to avoid the deed to the said Powhatan W. Bouldin and James E. Bouldin, referred to in paragraph 16 hereof, and wherein and whereby the said Robinson recited that the consideration for the said deed was certain acts to be done and certain promises to be performed by the said Bouldins; that none of the said acts had been done nor any of the promises kept or performed by the said Bouldins; that the entire consideration for the said deed had wholly failed; that the said deed had thereby become void and of no effect or at least, voidable at his election and that he had elected to repudiate the said deed.

21. On or about February 21, 1885, the said David W. Bouldin executed an instrument in the form of a deed which was recorded June 19, 1885, in Pima County, Arizona, in book 13 of Deeds of

Real Estate, at page 140, and in Santa Cruz County, Arizona, in book 1 of Deeds of Real Estate (Transcribed) at page 570, and wherein and whereby the said David W. Bouldin undertook and purported to convey to John Ireland and Wilbur H. King the undivided one-third of one-third of all right, title and interest owned, controlled and possessed by the said David W. Bouldin in the land described in paragraph 2 hereof, and at that time the said David W. Bouldin, as has hereinbefore been shown, had no [13] right, title or interest in or to any part of the said land. Prior to May 2, 1895, as plaintiffs are informed and believe, the said David W. Bouldin and John Ireland and Wilbur H. King agreed to rescind the transaction in which the said deed was given, and the said David W. Bouldin gave the said John Ireland and Wilbur H. King his note for the money which had been paid him by the said Ireland and King, and said Ireland and King gave said Bouldin a bond to reconvey said land to him. The note was not paid when due and on May 2, 1895, a judgment on said note in favor of the said Ireland and King, and against Leo Goldschmidt, as administrator of the estate of the said David W. Bouldin, deceased, was rendered by the District Court for the First Judicial District of the Territory of Arizona; and under an execution issued on said judgment, the sheriff of Pima County, Arizona, sold and conveyed to the said Wilbur H. King, all the right, title and interest of Leo Goldschmidt, as such administrator, in and to the land described in paragraph 2 hereof on July 31, 1895, which was nothing. On or about

April 8, 1907, the widow of John Ireland executed a quitclaim deed, which was recorded May 2, 1907, in Santa Cruz County, Arizona, in book 4 of Deeds of Real Estate at page 360, and wherein and whereby she purported to convey to the defendant, Joseph E. Wise, all the right, title and interest she had in and to the land described in paragraph 2 hereof. On or about April 24, 1907, the said Wilbur H. King executed a quitclaim deed, which was recorded May 2, 1907, in Santa Cruz County, Arizona, in book 4 of Deeds of Real Estate, at page 357, and wherein and whereby the said King purported to convey to the defendant Joseph E. Wise, all his right, title and interest in the land described in paragraph [14] 2 hereof. \* \* \*

22. Between March 13, 1907, and September 17, 1913, various persons claiming to be descendants of Luis Maria Baca executed deeds purporting to convey to the defendant, Joseph E. Wise and his brother, Jesse H. Wise, all their right, title and interest as heirs of Luis Maria Baca in and to the land described in paragraph 2 hereof. The said Jesse H. Wise subsequently conveyed whatever interest in said land he acquired by said instruments to the defendant Margaret W. Wise. By reason of the title bond referred to in paragraph 9 hereof, and the deeds of May 1, 1864, and May 30, 1871, referred to in paragraphs 5 and 11 hereof, the persons executing the said deeds as descendants of Luis Maria Baca had no title to convey and the said Wises took nothing by said deeds.

23. On or about October 26, 1899, J. Howe

Watts, Mary A. Wardwell, Louise Wardwell, Frances A. Bancroft and Albert L. Bancroft, her husband, who, with the exception of Albert L. Bancroft, are claimed to be the children of John S. Watts, executed what purports to be a quitclaim deed which was recorded August 2, 1909, in Santa Cruz County, Arizona, in book 5 of Deeds of Real Estate, at page 376, and wherein and whereby the grantors undertook and purported to convey to John Watts, who is claimed to be a son of John S. Watts, all the right, title and interest of the grantors as alleged heirs of John S. Watts in and to the land described in paragraph 2 hereof. The defendant Santa Cruz Development Company claims to have succeeded by subsequent conveyances to whatever interest the said John Watts acquired by the said deed or had as the son and heir of John S. Watts, [15] deceased. By reason of the title bond referred to in paragraph 9 hereof and the deed of January 8, 1870, from John S. Watts to Christopher E. Hawley, referred to in paragraph 6 hereof, the children and heirs of John S. Watts, at the time of the execution of the several deeds referred to in this paragraph, had no right, title or interest in or to said land or any portion thereof, and could convey and did convey nothing to John Watts or through him and his grantees to the defendant Santa Cruz Development Company.

23a. By reason of the premises defendants or some of them claim some right, title or interest in said land adverse to plaintiffs.

24. Prior to August 3, 1899, Alex F. Mathews

and S. A. M. Syme by mesne conveyance had become the owners of the land conveyed by Jno. S. Watts to Christopher E. Hawley by a deed, exhibit "A."

25. Prior to February 8, 1907, the said Alex F. Mathews died leaving a last will and testament dated September 22, 1900, and probated in Greenbrier County, West Virginia, January 2, 1907, wherein and whereby he nominated his sons, Mason Mathews, Charles G. Mathews, and Henry A. Mathews, executors thereof, and devised his estate to be distributed in accordance with the laws of West Virginia in force concerning the estates of persons who die intestate, authorizing and empowering his executors to sell any of his property for the purpose of converting it into money in order to make distribution and apportionment and to execute all papers necessary to carry out such sales without recourse to any court, and to execute on behalf of the estate any papers proper, necessary or convenient for carrying out any agreements into which he might have entered, [16] without recourse to any court, with the same force and effect as if said executors were acting under the authority and direction of a court of competent jurisdiction.

26. On or about February 8, 1907, the said Samuel A. M. Syme, and the heirs, devisees and legal representatives of the said Alex F. Mathews sold and conveyed the land conveyed by the deed from Watts to Hawley, exhibit "A," referred to in paragraph 6 hereof, to the plaintiffs by deed which was duly recorded in Santa Cruz County, Arizona, in book 7 of Deeds of Real Estate at page 546, and over

since February 8, 1907, plaintiffs have been and are now the owners of said land.

27. The plaintiffs pray leave upon the hearing to refer to the originals or copies of the various deeds, agreements or other instruments in this complaint mentioned, described or referred to as the same may be produced upon said hearing for a more detailed, particular and accurate description thereof, and for proof of the allegations in reference thereto.

28. The value of the land described in paragraph 2 of the complaint herein is upwards of \$100,000; and the interest of the plaintiffs therein is upwards of \$100,000. The plaintiffs are in possession of said land.

WHEREFORE, the plaintiffs demand judgment against the defendants:

First: That the deed, dated January 8, 1870, and recorded in Santa Cruz County, Arizona, in book 1 of Deeds of Real Estate (Transcribed) at page 562, from John S. Watts to Christopher E. Hawley and described and referred to in paragraph 6 of the complaint herein conveyed to said Hawley the tract of land in Santa Cruz County, Arizona, known as Baca Float No. 3, granted to the heirs of Luis Maria Baca by act of Congress approved June 21, 1860, and by said heirs [17] conveyed to said John S. Watts, and bounded and described as follows:

“Commencing at a point one mile and a half from the base of the Salero Mountain in a direction North forty-five degrees east of the highest point of said mountain, running thence from

the said beginning point West twelve miles, thirty-six chains and forty-four links; thence South twelve miles, thirty-six chains and forty-four links; thence East twelve miles, thirty-six chains and forty-four links; and thence North twelve miles, thirty-six chains and forty-four links to the place of beginning."

including all the right, title, interest, claim and demand of the heirs of Luis Maria Baca or their descendants, and of John S. Watts and his heirs and their descendants.

Second: That at the times the instruments referred to in paragraph 12 of the complaint herein were executed, the grantors thereon had no title to said land or any portion thereof as heirs of Luis Maria Baca or as heirs of John S. Watts, and could and did convey nothing to David W. Bouldin, if said instruments be considered to be conveyances; and, if said instruments be considered agreements to give said Bouldin a two-thirds interest in the property if he succeeded in perfecting the title, he failed to do so and never became entitled to such interest.

Third: That the agreement of John C. Robinson of June 8, 1885, referred to in paragraph 13 of the complaint herein to give David W. Bouldin a half interest in the land relocated in consideration of said Bouldin's relocating the Float under the order of the Commissioner of the General Land Office of March 12, 1885, was void on account of said order being without authority and void; and that the agreement as to the division of interests in the said land between John C. Robinson and Powhatan W.

Bouldin and James E. Bouldin, referred to in paragraph 16 of the complaint herein, and the instrument, referred to in paragraph 18 of the complaint herein, purporting to convey the north half of the said land to Powhatan W. Bouldin and James E. Bouldin, are based on said agreement of June 8, 1885, and void.

Fourth: That the defendants, James E. Bouldin, Jennie N. Bouldin, John Bouldin and Mary Bouldin have no right, title or interest in or to the said land or any portion thereof. [18]

Fifth: That the instrument of February 21, 1885, executed by David W. Bouldin and purporting to convey to John Ireland and Wilbur H. King an undivided one-third of one-third of the said land did not convey any interest therein, and the sale and conveyance by the sheriff under the execution on the judgment against Leo Goldschmidt as administrator of the estate of David W. Bouldin, deceased, referred to in paragraph 21 of the complaint herein, did not convey anything; and that the defendant, Joseph E. Wise did not get any title to the said land or to any portion thereof by the purported conveyances to him from the widow of John Ireland and from Wilbur H. King, referred to in paragraphs 21 of the complaint herein.

Sixth: That the various conveyances from persons claiming to be descendants of one or more of the heirs of Luis Maria Baca to Joseph E. Wise and to Jesse H. Wise between March 13, 1907, and September 17, 1913, referred to in paragraph 22 hereof, did not convey any right, title or interest to the said

Wises or either of them in or to the said land or in or to any portion thereof.

Seventh: That the defendants, Jesse H. Wise, Lucia J. Wise, Joseph E. Wise, and Margaret W. Wise have no right, title or interest in or to the said land or in or to any portion thereof.

Eighth: That the deeds from J. Howe Watts, Mary A. Wardwell, Louise Wardwell, Frances A. Bancroft and Albert L. Bancroft to John Watts and from John Watts and his grantees to the defendant Santa Cruz Development Company conveyed nothing and the defendant Santa Cruz Development Company has no right, title or interest in or to the said land or in or to any portion thereof.

Ninth: That the defendants, James E. Bouldin, Jesse H. Wise, Lucia J. Wise, Jennie N. Bouldin, John Bouldin, Mary Bouldin, Joseph E. Wise, Margaret W. Wise, W. C. Rifenburg, and Santa Cruz, Development Company, be forever foreclosed from making any claim on account of the matters alleged in the complaint herein to the said land or any portion thereof.

Tenth: That the mortgage from David W. Bouldin to W. G. Rifenburg, dated October 6, 1886, referred to in [19] paragraph 14 of the complaint herein, conveyed nothing and the defendant, W. G. Rifenburg, and any person claiming by, through or under him, has no right, title or interest in or to the said land or in or to any portion thereof.

Eleventh: That your orators may have such

other, further and general relief as the circumstances of the case require.

S. L. KINGAN,  
Solicitor for Plaintiffs.

HARTWELL P. HEATH,  
Of Counsel.

Verified March 26, 1915.

[**Note as to Exhibits "A," "B" and "C."**]

Exhibit "A" being the same as Plaintiffs' Exhibit "N"; Exhibit "B" being the same as Defendant Wise's Exhibit 14; Exhibit "C" being the same as Defendant Wise's Exhibit 16.

[**Paragraph X of Original Bill.]**

Paragraph X of the original bill filed June 23, 1914, read as follows:

10. On or about January 13, 1870, the said Christopher E. Hawley made a declaration of trust in which he stated that he held the said land as trustee for James Eldredge and Charles D. Poston. The interest of said Charles D. Poston in said land depended on a contingency which never occurred and consequently said interest never attached to said land and, though said Poston lived in the immediate neighborhood of said land until his death a few years ago, he made no claim to have any interest in said land. Upon information and belie whatever interest said Poston had was subsequently acquired by plaintiffs.

[**Note as to Paragraph 24 of Original Bill.]**

Paragraph 24 of the original bill related to the transaction between Alex. F. Mathews and S. A. M.

Syme and the Arizona Copper Estate of August 3, 1899, and to the [20] instruments executed by the parties in connection therewith.

**Amended Answer of Santa Cruz Development Company.**

Filed August 19, 1914.

Santa Cruz Development Company, one of the above-named defendants, by G. H. Brevillier, its solicitor, comes and makes the following amended answer to the bill herein as amended:—

First. This defendant alleges that there is a defect of parties defendant herein in that The Arizona Copper Estate, referred to in said bill, and recited in the conveyance to it set forth in the bill to be a corporation organized and existing under the laws of Arizona, is not made a party defendant herein.

Second. Further answering the bill herein, this defendant alleges that more than fifteen years have passed since the said conveyance by Mathews and Syme to The Arizona Copper Estate, and that more than thirteen years have passed since the last of the notes referred to in the mortgage made by said The Arizona Copper Estate to said Mathews and Syme recorded in book 15 of Mortgages, page 60, in the office of the recorder of Pima County, Arizona, and referred to in the bill, became due and payable, and upon information and belief, no act or action at law, in equity or otherwise, has ever been begun, taken, or instituted by said Mathews and Syme, or either of them, or the plaintiffs herein, or either of them (except their action in this court known

as No. E-4 Tucson and filed on June 23, 1914) or by any person or persons in their behalf, or person or persons claiming by, from, through or under them or either of them, toward the exercise of any right or remedy whatsoever with reference to said The Arizona Copper Estate, and [21] that all rights and remedies of the plaintiffs herein or either of them with reference to said The Arizona Copper Estate, in any matter or thing whatsoever, are now barred by their gross laches and by every statute or rule of limitation of the United States of America, or of the Territory of Arizona, or the State of Arizona, and upon information and belief, it denies that there is any instrument in writing signed by or on behalf of The Arizona Copper Estate expressing or evidencing the intention of the parties to the transactions with it aforesaid, except the deed to it, and the mortgage from it as hereinbefore stated.

Third. Further answering each and every allegation in the bill with reference to the instrument executed by John S. Watts in favor of Christopher E. Hawley, copy of which is attached as exhibit A, to the bill, this defendant avers that no attempt, demand or request in the form of proceedings at law or in equity, or otherwise, was ever made, begun or instituted by said Christopher E. Hawley, or any person or persons claiming by, from, through or under him, to have said instrument reformed or corrected in any way, but that more than forty-four years have passed since said instrument was executed and delivered, and that said Christopher E. Hawley and all persons claiming by, from, through, or under

him, including the plaintiffs, have been guilty of gross laches in not seeking to reform or correct said instrument, in case it did not express the true meaning of the parties, and that any attempt so to do is now barred by every statute or rule of limitation of the State of Arizona, or of the former Territory of Arizona, or of New Mexico, or of Indiana, or of California, or of any other state or territory or jurisdiction, or of the United [22] States of America; and this defendant avers that it is informed and verily believes that said Christopher E. Hawley, and all persons claiming by, from, through or under him, never contended or believed that said instrument covered anything except the interest of said John S. Watts in that Baca Float No. 3 known as the attempted amended location of 1866, until the rejection of said location in 1899.

Fourth. Answering the paragraph or section of the bill marked "5," it denies that the persons executing said deed of May 1, 1864, were all the heirs of Luis Maria Baca, deceased.

Fifth. Answering the paragraph or section of the bill, marked "6," this defendant denies that said John S. Watts sold or conveyed to said Christopher E. Hawley or any other person or corporation, Baca Float No. 3, located as set forth in paragraph "2," of the bill, or that he ever sold to said Christopher E. Hawley, or any other person or corporation, Baca Float No. 3, as set out in paragraph "7," of the bill, but it admits that on January 8, 1870, said John S. Watts, by the instrument

set out as exhibit "A" of the bill, quitclaimed to Christopher E. Hawley the interest which said grantor then had in the right to obtain the approval of Baca Float No. 3, according to the location of 1866, referred to in paragraph "7," of the bill, or in the land included within that Baca Float No. 3 known as the location of 1866.

Sixth. Answering the paragraph or section of the bill marked "7," this defendant denies that John S. Watts applied for leave to amend the description under the belief that it was simply an amendment of the selection and location as made on June 17, 1863, but, on the contrary, this defendant avers [23] that said location of 1866 was intended as a new or re-location of the location of June 17, 1863; and it denies that between May 21, 1866, until July 25, 1899, or at any time between said periods, all or any of the parties interested, except those claiming under the deed to Hawley as aforesaid, believed or contended that Baca Float No. 3 was described only by the metes and bounds of the so-called amended location of 1866, and it denies that the actual metes and bounds of said location of 1863, or of said location of 1866, had not been determined prior to July 25, 1899, but on the contrary, it avers that said locations had been noted by the officials of the Land Department on its records and maps and were known to the parties claiming under the deed to Hawley, as aforesaid, for a long time prior thereto. It alleges that said Hawley, or his grantees, repeatedly and continuously from 1870 to June, 1899, applied to the Land Department of the United States with full

knowledge of said 1863 location, for a confirmation of said location of 1866, as described in the said deed to Hawley.

Seventh. Answering the paragraph or section of the bill marked "8," it denies that John S. Watts intended to, or did, convey to said Hawley by said deed attached to the bill as exhibit "A," Baca Float No. 3 as set forth in paragraph "2," of the bill, and it denies that there was any mistake in the statement of metes and bounds or description in said deed, but on the contrary it avers that said John S. Watts intended to and did quitclaim to said Christopher E. Hawley the interest which said John S. Watts then had to obtain the approval of that Baca Float No. 3, known as the attempted amended location of 1866, or to quitclaim to said Hawley the interest of said John S. Watts at that time in the land [24] specifically described in said deed by metes and bounds. It avers that there is no instrument in writing signed by John S. Watts expressing the intention of the party to said deed, copy of which is attached to the bill as exhibit "A," except said deed itself.

Eighth. Answering the paragraph or section of the bill marked "9" it denies the construction placed by the plaintiffs on the deed attached to the bill as exhibit "A," and alleges that it is without knowledge, information or belief as to all or any of the other matters set forth in paragraph "9," of the bill.

Ninth. Answering the paragraph or section of the

bill marked "10" it denies that the interest (if any) of Charles D. Poston in said land depended on a contingency which never occurred, and it is without knowledge, information or belief as to whether or not the interest of said Poston, if any, was subsequently acquired by the plaintiffs or either of them, and it avers that it is without knowledge, information or belief as to whether or not said Poston ever made any claim to any interest in said land.

Tenth. Answering the paragraph or section of the bill marked "11" it admits that on or about May 30, 1871, certain heirs of Luis Maria Baca ex cuted a deed to said John S. Watts, as will appear from the original of said deed when shown to the Court for its construction thereof, but it denies that such deed inured to the benefit of said Christopher E. Hawley or any person claiming by, through or under him.

Eleventh. Answering the paragraph or section of the bill marked "12," it denies that on or about September 30, 1884, or at any other time, any persons claiming to be the widow [25] or any heir of John S. Watts executed to David W. Bouldin a quitclaim or other deed of all or any part of said Baca Float No. 3. as located on June 17, 1863, and it denies that by the title bond referred to in the bill, all or any of the heirs of Luis Maria Baca, or of John S. Watts, held any title in trust for the said Christopher E. Hawley or his successors in title or the plaintiffs, or either of them, and it is without knowledge, information or belief, as to whether or not

all or any of the grantors or alleged grantors in the alleged deed of January 14, 1878, to David W. Bouldin were or was in fact an heir of said Baca; and it denies that said John Watts was the lawful attorney in fact of any of the parties for whom he is alleged to have signed said instrument of September 30, 1884, or had any power to execute it in their or any of their behalf. It avers that if there was any authority to said John Watts to execute said instrument as attorney in fact for the parties for whom it is alleged that he acted as such attorney, said authority was not in writing, and signed by the doners of the power as required by law.

Twelfth. Answering the paragraph or section of the bill marked "13," it denies that it has any knowledge, information or belief as to whether or not John C. Robinson, prior to June 8, 1885, or at any time, became the owner of the land or location quitclaimed by John S. Watts to Christopher E. Hawley, as aforesaid.

Thirteenth. Answering the paragraph or section of the bill marked "16," it avers that it is without knowledge, information or belief as to whether or not there was any mistake of fact in said agreement or partition, or whether there was any consideration therefor. [26].

Fourteenth. Answering the paragraph or section of the bill marked "19," it avers that it is without knowledge, information or belief as to all or any of the allegations set forth in said paragraph of the bill.

Fifteenth. Answering the paragraph or section of the bill marked "20," it avers that it is without

knowledge, information or belief as to all or any of the allegations therein contained.

Sixteenth. Answering the paragraph or section of the bill marked "21," it avers that it is without knowledge, information or belief as to whether or not, prior to May 2, 1895, or at any time, David W. Bouldin, John Ireland and Wilbur H. King, or any of them, agreed to rescind the transaction set forth in said paragraph of the bill, or as to whether or not a note, or any obligation or any other consideration whatsoever, was given by said David W. Bouldin, to the said John Ireland, and Wilbur H. King, and as to whether or not said Ireland or King, or either of them, gave said Bouldin or any other person a bond or any agreement to reconvey said land or any part thereof to said Bouldin or any other person.

Seventeenth. Answering the paragraph or section of the bill marked "22," it avers that it is without knowledge, information or belief as to whether or not any of the persons executing the deeds to said Joseph E. Wise and said Jesse H. Wise, or either of them, were in fact heirs or descendants of said Luis Maria Baca, deceased.

Eighteenth. Answering the paragraph or section of the bill marked "23," it admits that on or about October 25, 1899, there was executed a deed to John Watts, as set forth in said paragraph of the bill and recorded as therein set [27] forth, and it avers that said persons, including said John Watts, were and were then all the heirs of said John S. Watts and of his widow. It further avers that it is, for

value and without any notice of any alleged mistake in said deed to Hawley or any intention by that grantor therein to convey the location of 1863 or any part thereof, the sole owner in fee simple of the entire Baca Float No. 3 as located on June 17, 1863, with the exception of a small part thereof known as the Alto group of mines in the northeasterly part of said Float, sold on June 29, 1914, by the sheriff of Santa Cruz County, Arizona, under a judgment duly recovered in favor of the State of Arizona for taxes in an action in the Superior Court of the said State, Santa Cruz County, in which said State was plaintiff and The Alto Copper Company and others were defendants, as will fully appear by the record of the proceedings in said action on file in the office of the clerk of said court, and in the office of the recorder of Santa Cruz County aforesaid. It denies that by reason of the title bond referred to in paragraph "9" of the bill, and the deed to Hawley, or either of them, any interest or estate whatsoever in said Baca Float No. 3, as located on June 17, 1863, passed to said Christopher E. Hawley, his heirs, legal representatives or assigns. It avers that said John S. Watts died intestate on June 11, 1876, a resident of Bloomington, Indiana, leaving to survive him as his sole heir at law his widow, Elizabeth A. Watts, and five children, namely: John Watts, J. Howe Watts, Mary A. Wardwell, Louise Wardwell and Frances A. Bancroft; and that said Elizabeth A. Watts died intestate on May 23, 1893, a resident of Berkeley, Calif., leaving to survive her as her sole heirs at law her children above named, John Watts, J. [28]

Howe Watts, Mary A. Wardwell, Louise Wardwell and Frances A. Bancroft. It further avers that the entire right, title, and estate which said John S. Watts had at any time in his lifetime, or that his widow and said five children, or any of them ever had in said Baca Float No. 3 as located on June 17, 1863, has been duly conveyed to this defendant, and is now vested in and owned by this defendant, with the exception of the part known as the Alto Group of Mines as hereinbefore particularly set forth.

Nineteenth. Answering the paragraph or section of the bill marked "24" it denies that said Alex. F. Mathews and S. A. M. Syme, or either of them, prior to August 3, 1899, or at any other time, had become the owners of said Baca Float No. 3 as located on June 17, 1863, or any part thereof; and this defendant avers that it is without knowledge, information or belief as to what interest, if any, they or either of them had at any time in the location of Baca Float No. 3, known as the attempted amended location of 1866. This defendant admits that said Mathews and Syme, on or about August 3, 1899, executed to The Arizona Copper Estate, described and recited by them to be a corporation organized and existing under the laws of Arizona, all their interest in Baca Float No. 3, wherever situate and located, and that said deed was acknowledged and recorded as set out in said paragraph of the original bill and in the alleged amendment thereof. This defendant avers that the instrument appearing of record in the office of the recorder of Pima County, in book 15 of Mortgages, page 60, is not a reconveyance or conditional

sale of said premises to said Mathews and Syme, but is in fact a mortgage of whatever interest was conveyed by said Mathews and Syme, and [29] that said mortgage is in fact a mortgage to said Mathews and Syme as trustees for the holders of the notes specified in said mortgage. This defendant avers, upon information and belief, that said The Arizona Copper Estate was duly organized and existing as a corporation under the laws of the Territory of Arizona on August 3, 1899, and for some time prior thereto, and this defendant avers that said deed and said mortgage were in fact delivered to known and designated individuals who had combined in some form of association which was then and there recognized by all the parties connected therewith as a corporation. This defendant is without knowledge, information or belief as to all the other allegations of fact contained in paragraph "24" as amended, except as hereinbefore specifically admitted. It avers that said transaction was not a nullity and that title to whatever interest so owned by said Mathews and Syme passed to said The Arizona Copper Estate, or to the individuals composing it. It is without knowledge, information or belief as to how many, if any, of said notes, or of any interest in them or any of them, are now in the possession of or owned by the plaintiffs or either of them.

Twentieth. Answering the paragraph or section of the bill marked "26," it admits that on or about it is without knowledge, information or belief as to all or any of the matters stated in said paragraph.

Twenty-first. Answering the paragraph or section

of the will marked "26," it admits that on or about February 8, 1907, S. A. M. Syme and certain persons claiming to be the heirs, devisees and legal representatives of Alex. F. Mathews executed to the plaintiffs as trustees for the [30] grantors, or as the attorneys in fact for said grantors, a certain instrument in writing which was thereafter recorded in Santa Cruz County, Arizona, in book 7 of Deeds of Real Estate, at page 546, but this defendant is without knowledge, information or belief as to whether or not said persons were in fact the heirs, devisees and legal representatives of said Alex. F. Mathews, and it denies that said instrument was in fact a deed or conveyed any estate in any property to the plaintiffs, or either of them, and this defendant further denies that since February 8, 1907, or at any time, the plaintiffs, or either of them, have been or now are the owners of said Baca Float No. 3, as located on June 17, 1863, or any part thereof.

Twenty-second. Answering the paragraph or section of the bill marked "27," it denies that the interests of the plaintiffs, or either of them, in said Baca Float No. 3, as located on June 17, 1863, is worth the sum of One Hundred Thousand (\$100,000) Dollars or any sum whatsoever, and it denies that the plaintiffs are or either of them is in possession of said land.

WHEREFORE, this defendant demands judgment against the plaintiffs dismissing the bill with costs and adjudicating that said instrument attached to the bill as exhibit "A," conveyed no interest in Baca Float No. 3 as located on June 17, 1863, and

that neither the plaintiffs or either of them, have any interest or estate in said Baca Float No. 3, as located on June 17, 1863; that the title thereto (with the exception of the Alto property aforesaid) is in this defendant; and that this defendant may have such other and further relief as the Court may deem proper.

# SANTA CRUZ DEVELOPMENT COMPANY.

[Seal]

By JAMES W. VROOM,  
President.

G. H. BREVILLIER,

## Its Solicitor.

Verified August 13, 1914. [31]

**Amended Answer of Joseph E. and Lucia J. Wise.**

Filed March 11, 1915.

To the Honorable, the Judge of the District Court  
of the United States, in and for the District of  
Arizona, and to the Honorable District Court of  
the United States, in and for the District of  
Arizona:

Come now the defendants, Joseph E. Wise and Lucia J. Wise, his wife, and for amended answer to the bill of complaint of the plaintiffs herein, do make the following reply and defense thereto.

1. Answering the section or paragraph marked 5 of the said bill of complaint, these defendants deny that on or about May 1, 1864, all the heirs of Luis Maria Baca sold and conveyed Baca Float No. 3 to John S. Watts, by deed, duly executed and acknowledged, as alleged in said bill; but they admit that

some of the heirs of said Luis Maria Baca did execute, on or about May 1, 1864, their quitclaim deed, wherein they did remise, release and quitclaim unto the said John S. Watts their respective interests in and to said Baca Float No. 3, according to the description set forth in section 2 of the bill; but these defendants aver that certain other of the heirs of the said Luis Maria Baca owning more than an undivided one-half of said lands and premises did not execute and did not sign or acknowledge the said deed, and further allege that under and by virtue of said deed, the said John S. Watts acquired less than an one-half interest in and to said Baca Float No. 3, aforesaid.

2. They deny that on or about January 8, 1870, or at all, the said John S. Watts sold or conveyed the said Baca Float No. 3 to one Christopher E. Hawley as alleged in paragraph 6 of said complaint, or that any such deed was duly [32] executed or acknowledged or recorded; but they aver that they are informed and believe that on or about said January 8, 1870, the said John S. Watts did execute and deliver to said Christopher E. Hawley a deed of quitclaim wherein he did remise, release and quitclaim unto said Christopher E. Hawley, the certain property therein described, a copy of which deed is marked exhibit "A" and attached to plaintiff's bill of complaint, and they admit that said deed of quitclaim was duly acknowledged and recorded as alleged in said complaint; and they further deny that said deed did convey to said Hawley said Baca Float No. 3, but allege that the same did remise, release and quitclaim to

said Hawley, only whatever interest the said Watts may then have had in that certain and specific piece of land which is specifically described or attempted to be specifically described in said deed.

3. Answering the paragraph or section of the bill marked "7," these defendants deny that John S. Watts applied for leave to amend the description under the belief that it was simply an amendment of the selection and location as made on June 17, 1863, but on the contrary, these defendants aver that said location of 1866 was intended as a new or relocation of the location of June 17, 1863; and they deny that between May 21, 1866 and July 25, 1899, or at any time between said periods, all or any of the parties interested, except those claiming under the deed to Hawley as aforesaid, believed or contended that Baca Float No. 3 was described only by the metes and bounds of the so-called amended location of 1866, and they deny that the actual metes and bounds of said location of 1863, or if said location of 1866, had [33] not been determined prior to July 25, 1899, but on the contrary, they aver that said location had been noted by the officials of the Land Department on its records and maps and were known to the parties claiming under the deed to Hawley, as aforesaid, for a long time prior thereto. They allege that said Hawley, or his grantees, repeatedly and continuously from 1870 to June, 1899, applied to the Land Department of the United States with full knowledge of said 1863 location, for a confirmation of said location of 1866 as described in the said deed to Hawley.

4. Answering the paragraph marked "8" of the bill, these defendants deny that said John S. Watts intended to convey to Christopher E. Hawley by the deed of January 8, 1870, exhibit "A," Baca Float No. 3, as the same is described in paragraph 2 of said bill of complaint; and they deny that said John S. Watts did convey to said Christopher E. Hawley by said deed of January 8, 1870, aforesaid, the said Baca Float No. 3, as described in paragraph 2 of said bill of complaint; they deny that the description by metes and bounds in said deed of January 8, 1870, exhibit "A" to plaintiff's complaint was executed under the mistaken belief existing at the time said deed was made, as to the metes or bounds of the said Float, as alleged in paragraph 8 of said complaint, or at all.

5. Answering the paragraph marked "9" of said bill, these defendants deny that the correct construction to be put on the said deed of January 8, 1870, exhibit "A," is supported by any of the facts alleged in paragraph 9 of said complaint; and not having sufficient information to form a belief, these defendants deny that the said John S. Watts on or about March 2, 1863, or at all, executed or [34] delivered to one William Wrightson, as alleged in paragraph 9 of said complaint, or at all, a title bond for said Baca Float No. 3, or that prior to January 8, 1870, the said Christopher E. Hawley did become entitled to or was in possession of said title bond, or was entitled thereunder to have a fee simple to said Baca Float No. 3, as described in paragraph 2 of said complaint, made to him; and these defendants deny

that the said plaintiffs, as successors in title to said Hawley, or at all, now own or possess said title bond.

6. Answering the paragraph marked "10" of said bill, these defendants admit that on or about January 13, 1870, the said Christopher E. Hawley made a declaration of trust in which he stated that he held certain lands as trustee for James Eldredge and Charles D. Poston, and aver that the lands he so referred to were the lands described in the said deed from John S. Watts to Christopher E. Hawley, of date January 8, 1870, exhibit "A," aforesaid. These defendants not having sufficient information to form a belief and not knowing what the terms of the said trust were, deny that the interest of said Charles D. Poston, in the lands referred to in said declaration of trust, depended on a contingency which never occurred, as alleged in paragraph 10 of said complaint or at all, and deny that consequently, or at all, said interest never attached to said land, or that the said Charles D. Poston made no claim to have any interest in said land.

7. Answering the section or paragraph marked "11" of the said bill of complaint and the amendments thereto of the plaintiffs herein, these defendants admit that on or about May 30, 1871, all of the heirs of Luis Maria Baca, [35] except, however, those particular heirs who thereafter conveyed their interest in said Baca Float No. 3 to David W. Bouldin, as hereinafter in this answer and amendment to said answer set forth, and also except Antonio Baca who was a son and heir of said Luis Maria Baca and also except the heirs of said An-

tonio Baca, did execute a deed to the said John S. Watts wherein they did convey to said Watts all their interest in the said Baca Float No. 3, according to the 1863 location thereof; but these defendants deny that any of said heirs ratified or confirmed the title made by them or any of them or by their attorney Tomas Cabeza de Baca to John S. Watts, as alleged in said bill of complaint, or at all; these defendants admit that those particular heirs of said Luis Maria Baca who signed, executed and acknowledged in their own proper name the said deed of date the 1st day of May, 1864, and referred to in section 3 of the bill of complaint herein, did ratify and confirm the said deed of May 1, 1864; but they deny that any of the other heirs of said Luis Maria Baca, or that any of the heirs who did not duly sign, execute and acknowledge the said deed of May 1, 1864, did ratify or confirm the said alleged deed of 1864; and these defendants admit that all of the heirs of said Luis Maria Baca, except those heirs who thereafter conveyed their interest to said David W. Bouldin and to the defendant Joseph E. Wise and defendant Jesse H. Wise, as hereinafter set forth, did, by the said deed of date May 30, 1871, relinquish and quitclaim to said John S. Watts, his heirs and assigns, all their right, title and interest in and to said Baca Float No. 3, and being the property described in said deed of May 1, 1864. These defendants deny that the said deed of May 30, 1871, being the deed mentioned in section [36] 11 of the bill, inured to the benefit of the said Christopher E. Hawley and deny that it cured

any defect that might have existed or did exist from the manner in which the deed to John S. Watts of May 1, 1864, was signed or executed or acknowledged, on behalf of some or any of the heirs of Luis Maria Baca, or at all; and these defendants further deny the allegations as set forth in the amendment of plaintiffs to the said section 11 of their bill, that the persons who executed the said deed of May 1, 1864, were all the heirs of said Luis Maria Baca and they deny that all the heirs of said Luis Maria Baca executed, or pretended to execute, said deed; and they deny that all the persons executing the deed, aforesaid, of date May 30, 1871, were all the heirs of said Luis Maria Baca; but they allege that there were other heirs of said Luis Maria Baca who did not execute, or pretend to execute, the said deed.

These defendants further aver that they are informed and believe and therefore allege the fact to be that the said deed of date May 30, 1871, has not been recorded in the county of Pima, State of Arizona; defendants further aver that the deeds executed by certain of the heirs of said Luis Maria Baca to David W. Bouldin, as hereinafter set forth, and also the deed executed by certain other heirs of said Luis Maria Baca to the defendants Joseph E. Wise and Jesse H. Wise, as hereinafter set forth, were duly recorded in the said county of Pima, when the said lands in dispute were situated in said county or were recorded in the said county of Santa Cruz, in which the said lands are now situated; that the said David W. Bouldin and the said

defendant Joseph E. Wise each was an innocent purchaser [37] for a valuable consideration, of all of the interest conveyed to them and each of them under the said deeds aforesaid, and herein-after set forth; that by reason thereof the said deed to said John S. Watts of date May 30, 1871, is null and void as against the prior recorded deed executed by certain heirs of said Luis Maria Baca to said David W. Bouldin, as hereinafter set forth, and also as against the deeds executed by other certain heirs of said Luis Maria Baca to defendants Joseph E. Wise and Jesse H. Wise, as hereinafter set forth and the said deeds last mentioned take precedence over the said deed to John S. Watts of date May 30, 1871.

8. Answering the paragraph marked "12" of said bill, these defendants deny that, by the title bond referred to in the said complaint, all or any of the heirs of Luis Maria Baca, or of John S. Watts, held the title, if any remained in them, in view of the deeds of May 1, 1864 and May 30, 1871, and of January 8, 1870, referred to in said bill of complaint, in trust for the said Christopher E. Hawley, or his successors in title, or of the said plaintiffs, as alleged in paragraph 12 of said complaint, or at all. And these defendants, not having sufficient information to form a belief, deny that said David W. Bouldin did not in any manner or to any extent perform the agreements on his part as alleged in paragraph 12 of said complaint, or at all.

9. Answering the paragraph marked "13" of said bill, these defendants deny that on June 8, 1885,

the said John C. Robinson, was, or that at any time prior to said 8th day of June, 1885, said John C. Robinson had been the owner of the land conveyed by John S. Watts to Christopher [38] E. Hawley by deed of January 8, 1870; referred to in paragraph 6 of said complaint, or at all; these defendants not having sufficient knowledge or information to form a belief, deny that on or about June 8, 1885, the said Robinson entered into an agreement with the said David W. Bouldin, as alleged in paragraph 13 of said complaint or at all; and these defendants deny that said alleged agreement between the said Robinson and the said David W. Bouldin was, in its inception, or at all, or at any times impossible of performance by the said David W. Bouldin, or was void, or that the said David W. Bouldin never could carry out said agreement on his part, or never performed any part thereof, or that the said David W. Bouldin never became entitled to a half or any interest in the said agreement, in any land whatever, as alleged in paragraph 13 of said complaint or at all.

10. Answering the paragraph marked "14" of the bill, these defendants deny that at the time the said David W. Bouldin attempted to make, or did make, the mortgage mentioned and referred to in paragraph 14 of said complaint, he, the said David W. Bouldin, had no other or better title than was conveyed to him by the instruments particularly described in paragraphs 12 and 13 of said complaint; but allege that the said David W. Bouldin did have other title at said time than the title which was

conveyed to him by the said instruments particularly described in paragraphs 12 and 13 of said complaint.

10a. Answering the paragraph marked "15" of the bill, these defendants deny that at the time said David W. Bouldin made, or attempted to make, the deed or instrument in the form of a deed, mentioned and referred to in said paragraph [39] 15, the said David W. Bouldin had no other or better title than was conveyed to him by the instrument particularly described in the paragraphs marked "12" and "13" of said bill, or either thereof; but these defendants allege that David W. Bouldin had other title which was conveyed to him by other deeds than those mentioned in the said paragraphs 12 and 13.

11. Answering the paragraph marked "16" of the bill, these defendants not having sufficient information to form a belief, deny that the agreement referred to in paragraph 16 of said complaint, being the agreement between the said John C. Robinson and Powhatan W. Bouldin and James E. Bouldin, by the said David W. Bouldin, as their attorney in fact, was made on the sole consideration of the agreement of June 8, 1885, described in paragraph 15 of said complaint; but these defendants allege that they are informed and believe that there were other and valuable considerations for the execution of said agreement aforesaid; and these defendants further deny that said agreement of June 28, 1892, between John C. Robinson and the said Bouldins, referred to in paragraph 16 of said com-

plaint was made under a mutual mistake of fact; and they deny that the same was without consideration and deny that the same was void. And in this behalf these defendants aver that these plaintiffs have no right or authority to attack the validity of said agreement; that more than twenty years have elapsed since the execution of said agreement and that neither the said John C. Robinson, nor anyone claiming under him, nor these plaintiffs, have any right, at this late date, to seek to have the said agreement annulled, on any ground whatsoever, and that any right of action for the purpose of having the said agreement annulled or for the purpose of having the same declared void is barred by [40] the statute of limitations of the State of Arizona, and that the said John C. Robinson, and all persons claiming under him, including these plaintiffs, have been guilty of laches, in not bringing a suit within the time limited by the statutes of limitations and in not bringing a suit within a reasonable time, for the purpose of cancelling said agreement, either for mutual mistake or for lack of consideration or for any other reason, and the said plaintiffs are now barred from raising any such question, or seeking any such relief.

12. Answering the paragraph marked "17" of the bill, these defendants deny that at the time the said David W. Bouldin made the deed mentioned in paragraph 17 of the complaint herein, that the said David W. Bouldin had no other or better title to the lands sought to be conveyed than was conveyed to him by the instrument described in paragraph 12,

13 and 16 of said complaint.

13. Answering the paragraph marked "18" of the bill, these defendants allege that the instrument in the form of a deed which on or about November 19, 1892, was executed by John C. Robinson to the said Powhatan W. Bouldin and James E. Bouldin, was in fact a deed and was duly acknowledged and recorded as required by law, being the deed mentioned and referred to in paragraph 18 of said complaint; and these defendants deny that said deed falls with the said instrument of June 28, 1892, as alleged in said paragraph 18 of said complaint, or at all.

14. Answering the paragraph marked "19" of the bill, these defendants deny that whatever interest the said Powhatan W. Bouldin and James E. Bouldin, or either of them, took by reason of the instrument mentioned in said complaint and referred to in paragraph 19 of said complaint, is now [41] vested one-half in the defendant Jennie N. Bouldin and one-half in the defendants John Bouldin and Mary Bouldin, who are infants; and in this behalf these defendants allege that prior to the execution of the said instrument to said Powhatan W. Bouldin and James E. Bouldin, to wit, on or about February 21st, 1885, the said David W. Bouldin did, by deed dated on said day which was duly acknowledged and thereafter and on the 19th day of June, 1885, was duly recorded in the office of the county recorder of said Pima County, convey to John Ireland and Wilbur H. King, an undivided one-ninth of all the right, title and interest which he, the said David W. Bouldin had on said day in

and to the said Baca Float No. 3, according to the description thereof in paragraph 2 of the complaint herein; and defendants further allege that the defendant Joseph E. Wise does claim a large interest under and by virtue of certain deeds executed to him by the said Wilbur H. King and the widow of said John Ireland, as hereinafter set forth.

15. Answering the paragraph marked "20" of the bill, these defendants not having sufficient information to form a belief, deny that on or about February 7, 1894, the said John C. Robinson gave a power of attorney to S. A. M. Syme, as alleged in paragraph 20 of said complaint, or at all, or that the consideration for the said deed referred to in said paragraph 20 was certain acts to be done, and certain promises to be performed by the said Bouldins, or that the entire consideration for the said deed had wholly failed; or that the said deed had thereby become void or of no effect or voidable, at the election of said Robinson, or at all, or that said Robinson had elected to repudiate said deed.

16. Answering the paragraph marked "21" of the bill, [42] these defendants aver that the instrument in the form of a deed which, in paragraph 21 of said complaint, plaintiffs allege was, on or about February 21, 1885, executed by the said David W. Bouldin, was, in fact a deed, and that the same was duly executed and was duly recorded, and that the same was a good deed of conveyance and did convey to the said grantees therein named, to wit: To John Ireland and Wilbur H. King, all of the right, title and interest and all the property which

it did purport to convey; and these defendants deny that at that time, the said David W. Bouldin had no right or title or interest in or to any part of said land. Defendants deny that prior to May 2, 1895, or at any other time, the said David W. Bouldin and John Ireland and Wilbur H. King, or any of them, agreed to rescind the transaction in which said deed was given; and not having sufficient information to form a belief, these defendants deny that David W. Bouldin gave the said John Ireland and Wilbur H. King, or either of them, his note for the money which had been paid by the said Ireland and King and that the said Ireland and King gave the said Bouldin a bond to reconvey said land to him. These defendants admit that a judgment was obtained by said Ireland and King, or one of them, against Leo Goldschmidt, as administrator of the estate of said David W. Bouldin, deceased, on or about May 2, 1895, said judgment being rendered and entered by the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, and that an execution or order of sale was issued under said judgment and that the sheriff of said Pima County sold and conveyed to said Wilbur H. King all the right, title and interest which said David W. Bouldin or his estate had in [43] and to the lands described in paragraph 2 of the complaint herein on July 31, 1895; but they deny that said interest was nothing, but on the contrary, they allege that said David W. Bouldin or his estate did have an interest on said day; and they further aver that the said Wilbur H.

King did become the owner under and by virtue of said sheriff's deed of all of the interest which the said David W. Bouldin or his estate had in said Baca Float No. 3 on the said 31st day of July, 1895. These defendants admit that on or about April 8, 1907, the widow of John Ireland did execute a deed conveying to defendant Joseph E. Wise, all of her right, title and interest in and to said Baca Float No. 3, and that on or about April 24, 1907, the said Wilbur H. King did execute to defendant Joseph E. Wise, his deed wherein he did convey to the defendant, all his right, title and interest in and to said Baca Float No. 3, as described in paragraph 2 of the complaint. But defendants deny that for the reasons stated in the said complaint of plaintiffs, and deny that for any reasons whatsoever, the said deeds just mentioned, or either of them, conveyed no title to any portion of said land, or conveyed no interest therein to said defendant Joseph E. Wise; but on the contrary these defendants allege that said deeds did convey to said Joseph E. Wise a large and substantial interest in and to said land and premises. And these defendants further aver that the said judgment aforesaid is final and conclusive and that plaintiffs, and all other persons, are estopped from again raising or questioning any of the matters or things which were decided, concluded or adjudged, in and by the said judgment, aforesaid, and particularly are estopped from denying the validity of the said judgment. [44]

17. Answering the paragraph marked "22" of said bill, these defendants deny that by reason of

the title bond referred to in paragraph 9 of said complaint, or for any other reason, or that by reason of the deeds of May 1, 1864, or May 30, 1871, referred to in paragraphs 5 and 11 of said complaint, of any other deeds, the person executing the said deeds to said defendants Joseph E. Wise, and his brother Jesse H. Wise, mentioned and referred to in paragraph 22 of said complaint, being deeds executed to said last two named defendants by descendants of Luis Maria Baca, had no title to convey; and deny that the said Wises, or either of them, took nothing by said deeds.

17a. Answering the paragraph marked "23" of said bill, these defendants, deny that by reason of the title bond referred to in paragraph 9 of the bill and of the deed of January 8, 1870, from John S. Watts to Christopher E. Hawley, referred to in paragraph 6 hereof, the children and heirs of John S. Watts at the time of the execution of the deeds referred to in said paragraph 23 of the bill, had no right, title or interest in or to the said land mentioned in their deeds, and deny that they could convey nothing at said time through said deeds; but these defendants allege that at the said time the said children of said John S. Watts did have a small undivided interest in the said lands and premises aforesaid.

18. Answering the paragraph marked "23a" of said bill, these defendants admit that the said Joseph E. Wise, does claim some right, title and interest in said land, as the owner of an undivided interest therein, as hereinafter more fully set forth, and that

he is the sole owner of a certain part thereof, as hereinafter fully set [45] forth; deny that the said plaintiffs are the owners of all or any part of said land, or the owners of all or any right, title or interest in and to said land, or any part thereof.

19. Answering the paragraph marked "24" of said bill, as amended, these defendants deny that prior to August 3, 1899, or ever or at all, the said Alex F. Mathews and S. A. M. Syme, by mesne conveyance, had become the owners of the land conveyed by John S. Watts to Christopher E. Hawley by the deed marked exhibit "A." These defendants admit that the deeds which appear of record, as alleged in said paragraph 24, do appear of record, and these defendants aver that they are without knowledge, information or belief as to all or any of the other allegations set forth in said paragraph 24 of said bill as amended.

19a. Answering the paragraph of the bill marked "25," these defendants aver that they are without knowledge, information or belief as to all or any of the matters stated in said paragraph.

20. Answering the paragraph marked "26" of the bill, these defendants admit that on or about February 8, 1907, the said Samuel A. M. Syme, and certain persons claiming to be the heirs, devisees and legal representatives of Alex F. Mathews, executed to the plaintiffs as trustees for the grantors, or as the attorneys in fact for the grantors, a certain instrument in writing which was thereafter recorded in Santa Cruz County, Arizona, in book 7 of Deeds of Real Estate, at page 546, but these defendants are

without knowledge, information or belief as to whether or not said persons were, in fact, the heirs, devisees and [46] legal representatives of said Alex F. Mathews and they deny that said instrument was, in fact, a deed, or conveyed any estate in any property to the plaintiffs or either of them, and these defendants further deny that since February 8, 1907, or at any time, the plaintiffs or either of them, have been or now are, the owners of said Baca Float No. 3 located on June 17, 1863, or any part thereof.

21. Answering the paragraph marked "28" of the bill, these defendants deny that the interest of plaintiffs in the said lands and premises, described in paragraph 2, of the complaint herein, is upwards of \$100,000 or is of any value whatsoever; deny that plaintiffs have any interest whatsoever except as trustees, under the said trust deed or mortgage, exhibit "D," aforesaid; and deny that said interest is of the value of upwards of \$100,000 or is of any value whatsoever; for the reason that the notes to secure which said trust deed or mortgage was executed are barred by the statute of limitations. Defendants further deny that plaintiffs, or either of them are entitled to the possession of said land or to any part or parcel thereof.

22. Further answering the said complaint, these defendants aver that the tract or parcel of land described in paragraph 2 of said complaint is almost entirely a different tract or parcel of land than the land described in paragraph 7 of said complaint, although the two tracts of land do, to a small extent overlap each other; that the defendants are informed

and believe and therefore allege the fact to be, that the said two different tracts of land bear the relation to each other, substantially as set forth in the following diagram thereof, the tract of [47] land described in paragraph 2 of said complaint, and being the tract as selected by the heirs of Luis Maria Baca in 1863, and approved by the Commissioner of the General Land Office, is named on said diagram as follows, to wit: "Location No. 1. 1863 Location. Approved by Commissioner of General Land Office;" while the other tract of land mentioned and described in paragraph 7 of said complaint, is marked as follows, to wit: "Location No. 2. 1866 Location. Invalid Location," and being the location which was declared void by the Secretary of the Interior of the United States.

## DIAGRAM.

12 miles, 36 ch 44 lks

Location NO. 2.  
1866 Location.

Invalid Location

N  
↑  
S

Salero Mountain

Haciendo  
de Santa Rita

Location No. 1  
1863 Location.

Approved by Commissioner  
of the General Land Office

12 miles 36 ch 44 lks



23. These defendants further allege that the deed executed by John S. Watts to Christopher E. Hawley, of date January 8, 1870, being exhibit "A" to plaintiff's complaint, and referred to in paragraph 6 of said complaint, described the property in said deed remised, released and quitclaimed according to the said 1866 description aforesaid, as substantially shown by Location No. 2 on the diagram aforesaid. And these defendants aver that the only part of said Baca Float No. 3 remised, released and quitclaimed to said Christopher E. Hawley by said deed aforesaid, was that portion of the said first location of said Baca Float which is included within the limits of said second location, substantially as shown in the diagram aforesaid, and therefore that the said Hawley did not acquire any right, title or interest whatsoever in the said Baca Float No. 3, as described in paragraph 2 of said complaint, under and by virtue of said deed aforesaid, or if he did acquire any interest it was only to a small portion thereof, on the northeast corner thereof, as substantially shown in said diagram.

24. Defendants further allege that on or about the 14th day of January, 1878, the following persons, to wit: Rafael Parado, Dolores Baca de Parado, Jesus M. Baca, Miguel Baca, Nepomuceno Baca, Apolonia Baca de Adamson, Jacinto Barreyesa, Palencio Baca, Francisco Baca, Maria Estapana Gorduna, Jesus Maria Baca, Inez Baca, Nepomuceno Baca, Manuel Baca and Juan Baca, being heirs and descendants of heirs of said Luis Maria Baca, did, by deeds duly executed acknowledged and thereafter

and on the 25th day of March, 1885, duly recorded in the said county of Pima, State of Arizona, convey unto said David W. Bouldin, an undivided [49] two-thirds of all their right, title and interest in and to said Baca Float No. 3, as described in said first and valid description thereof, and that under and by virtue of said deeds the said David W. Bouldin became the owner of a very large interest in and to said Baca Float No. 3.

25. Defendants further aver that the defendant Joseph E. Wise claims an undivided two-thirds interest in and to said Baca Float No. 3, as described in paragraph 2 of said complaint, being the valid location thereof, under and by virtue of the following instruments, deeds and facts; that the said John S. Watts to whom was executed and delivered by the heirs of Luis Maria Baca, the various deeds alleged in the complaint and herein mentioned and referred to, died on or about June 11, 1876, leaving surviving him, his wife, Elizabeth A. Watts, and five children, to wit: John Watts, a son, J. Howe Watts, a son, Mary A. Watts, a daughter, who subsequently married W. V. B. Wardwell, Louise Watts, a daughter, who subsequently married Atwater Wardwell and Frances A. Watts, a daughter, who subsequently married A. L. Bancroft; that at the time of the death of the said John S. Watts, he was the owner of all of the interest theretofore acquired by him in and to the said Baca Float No. 3, as described in paragraph 2 of said complaint, he never having conveyed the same; that thereafter, and on or about the 30th day of September, 1884, the said widow and heirs

aforesaid, of the said John S. Watts, being then the owners of all the interest which the said John S. Watts had theretofore owned in the said Baca Float No. 3, aforesaid, and being the interest acquired by said John S. Watts in his lifetime, under the deeds executed by certain heirs of the said Luis Maria Baca, as aforesaid, did, for a [50] valuable consideration, execute and deliver to one David W. Bouldin their deed, dated on said day, wherein and whereby they did grant, sell and convey unto said David W. Bouldin, an undivided two-thirds interest in and to said lands and premises aforesaid, describing the same with the specific boundaries of said valid location, and as described in paragraph 2 of said complaint; that said deed was signed and delivered in the presence of two witnesses and thereafter and on the 25th day of March, 1885, the same was recorded in the office of the county recorder of said Pima County, in the then Territory of Arizona, in book 13 of Deeds of Real Estate at pages 13, *et seq.*, thereof; that thereafter and on the 14th day of April, 1888, the execution of said deed was duly acknowledged before Frank P. Clark, clerk of the County Court of El Paso County, State of Texas, being a court of record having a seal, and thereafter and on the 18th day of April, 1888, the said deed was again recorded in the office of the said county recorder of said Pima County, in book 14 of Deeds of Real Estate, at pages 597, *et seq.* thereof.

And these defendants further aver that the deed which plaintiffs allege in their complaint was executed by the said John S. Watts to Christopher E.

Hawley, on or about the 8th day of January, 1870, was not recorded in the said county of Pima, or in any other county in the Territory of Arizona, until the 9th day of May, 1885, being nearly seven months after the heirs of said John S. Watts had executed and delivered their deed aforesaid to said David W. Bouldin; and these defendants aver upon information and belief that the said David W. Bouldin was an innocent purchaser for a valuable consideration without notice [51] of the said deed from the said John S. Watts to said Christopher E. Hawley, and therefore, in any event, the said deed is invalid and of no force or effect as against the right, title and interest which said David W. Bouldin acquired under and virtue of his deed aforesaid, of date September 30, 1884.

Defendant Joseph E. Wise further avers that he claims under and by virtue of certain mesne conveyances hereinafter set forth from the said David W. Bouldin, all of the undivided two-thirds interest in and to said lands so conveyed by the widow and heirs of said John S. Watts to said David W. Bouldin, as aforesaid.

Defendant Joseph E. Wise further avers that in addition to the said undivided two-thirds interest aforesaid, he further claims all of the right, title and interest acquired by the said David W. Bouldin, in and to said Baca Float No. 3, under and by virtue of the deeds executed to the said David W. Bouldin by certain of the heirs of the said Luis Maria Baca, deceased, and fully set forth in paragraph 24 of this answer; and that he claims the said additional inter-

est in said lands and premises under and by virtue of certain mesne conveyances, hereafter set forth, from the said David W. Bouldin.

Defendant Joseph E. Wise further avers that he claims a further undivided 1/36 interest in and to said Baca Float No. 3 according to the description thereof in paragraph 2 of the complaint herein, under and by virtue of certain conveyances executed directly to him by the heirs of said Luis Maria Baca, deceased, and in this behalf these defendants allege that Antonio Baca was a son and one of the heirs of the said Luis Maria Baca and as such son and heir [52] was entitled, as near as these defendants can ascertain, to an undivided 1/18 interest in and to the said lands and premises aforesaid; that the said Antonio Baca never did convey or attempt to convey his interest to said John S. Watts, or to said David W. Bouldin, or to any other person whatsoever; that in the month of August, 1913, the heirs and descendants of the said Antonio Baca, heir of the said Luis Maria Baca, did, by deeds duly executed and acknowledged, convey all of their right, title and interest in and to said Baca Float No. 3, according to the said 1863 location, to one Marcos C. de Baca, the said deeds being duly acknowledged and being duly recorded in the office of the county recorder of Santa Cruz County, respectively as follows, to wit: In book 7 of Deeds, pages 344 et seq., 346 et seq., 348 et seq., 363 et seq.; that thereafter and on the 17th day of September, 1913, the said Marcos C. de Baca and Francisca C. de Baca, his wife, did, for a valuable consideration, duly execute,

sign and acknowledge, their deed, conveying all of the said interest of the said heirs aforesaid, to defendants Joseph E. Wise and Jesse H. Wise, which said deed is of record in book 7 of Deeds of Real Estate at page 394 et seq., in the office of the county recorder of Santa Cruz County, the same having been so recorded on the 14th day of October, 1913; and that in addition thereto Ciria Salazar, as heir of the said Luis Maria Baca, or descendant of heirs, did convey her interest to the said Joseph E. Wise and Jesse H. Wise in said lands and premises, aforesaid, by deed dated August 8, 1913, duly acknowledged and thereafter and on the 17th day of September, 1913, duly recorded in book 7 of Deeds at pages 369 et seq., in the office of the said county [53] recorder of said Santa Cruz County; that under and by virtue of said deeds aforesaid, defendant Joseph E. Wise claims an undivided  $\frac{1}{2}$  interest in and to all of the property so conveyed to him by said deeds last mentioned, as aforesaid.

Defendant Joseph E. Wise further avers that he derives his title to the said undivided  $\frac{2}{3}$  interest acquired by him under and by virtue of the mesne conveyances from the said David W. Bouldin, as hereinafter set forth, the said David W. Bouldin having acquired his said interest as aforesaid, from the deed executed to him by the widow and heirs of said John S. Watts, aforesaid, of date September 30, 1884.

25a. That thereafter and on or about the 21st day of February, 1885, the said David W. Bouldin did, by deed dated on said day, convey to John Ire-

land and Wilbur H. King, an undivided 1/9 of his, said Bouldin's, interest, in and to said Baca Float No. 3, describing the same according to the said first and valid location thereof, which deed was duly acknowledged, delivered and was thereafter and on the 19th day of June, 1885, recorded in the office of the said county recorder of said Pima County, in book 13, Deeds of Real Estate, page 140.

26. That thereafter, and on or about the 13th day of March, 1893, the said Wilbur H. King and John Ireland brought suit against the said David W. Bouldin, before the District Court of the First Judicial District of the Territory of Arizona in and for the county of Pima, to recover certain sums of money, which they alleged to be due them, in which suit they did sue out a writ of attachment and on or about the said 14th day of March, 1893, they [54] caused the same to be levied upon the following property of said David W. Bouldin, to wit: The said Baca Float No. 3, as described by said valid location thereof; that pending the hearing of said action, the said David W. Bouldin died, and Leo Goldschmidt was duly appointed on or about the 20th day of April, 1895, the administrator of the estate of said David W. Bouldin, deceased, by the Probate Court of Pima County, Territory of Arizona, and that he duly qualified, on or about said day, and entered upon his duties as such administrator, and that his appointment has not been revoked; that as such administrator, the said Leo Goldschmidt was substituted as party defendant in the said suit aforesaid; that thereafter and on the 2d day of May, 1895, judgment was ren-

dered in said suit aforesaid, by said District Court, aforesaid, against the said administrator, and in favor of the plaintiffs in said action, for the amount sued on in said action, and in which said judgment the said Court did foreclose the said attachment lien, aforesaid, as the same existed on the 14th day of March, 1893, and did order the said property so attached, to be sold to satisfy the said judgment and amount found due to plaintiffs, as aforesaid; and that thereafter and on or about the 31st day of July, 1893, the then sheriff of said Pima County, to wit, R. N. Leatherwood, under the said judgment and order of said Court aforesaid, and under an order of sale duly issued thereunder, did sell at public sale, as required by law and the order of said Court, all of the right, title, interest and claim which the said David W. Bouldin had on the 14th day of March, 1895, the date of said levy of attachment aforesaid, in and to said lands and premises; that said Wilbur [55] H. King became the purchaser at sale and said property was by said sheriff, sold to him; that a certificate of sale was duly issued to him by the said sheriff of Pima County; that there was no redemption from the said sale, and that thereafter, the time for redemption having expired, and or about the 16th day of January, 1899, the then sheriff of said Pima County, to wit, Lyman W. Wakefield, did make, execute, acknowledge and deliver to said Wilbur H. King, the purchaser at said sale aforesaid, a deed, wherein and whereby he did attempt to convey to said King all of said property so sold; that the said deed from said sheriff was duly recorded in the re-

corder's office of said Pima County, on February 7, 1899.

26a. That thereafter and on or about the 24th day of April, 1907, the said Wilbur H. King did sell and convey for a valuable consideration to the defendant Joseph E. Wise, by deed duly executed and acknowledged, all of his, said Wilbur H. King's right, title and interest in and to the said Baca Float No. 3, according to the said valid description thereof, as well as all of the interest acquired by him, said King, under said sheriff's sale, aforesaid, which said deed was duly recorded in the office of the said county recorded of Santa Cruz County, in book 4 of Deeds, page 357, on May 2d, 1907.

27. That sometime prior to the 8th day of April, 1907, the said John Ireland died, leaving a widow, Mrs. A. M. Ireland; that these defendants are informed and believe that the interest acquired by said John Ireland was community property of himself and wife; that on or about said 8th day of April, 1907, the said Mrs. A. M. Ireland, widow of said John Ireland did sell and convey unto the [56] defendant Joseph E. Wise by deed dated on said day, and duly acknowledged, and recorded on May 2, 1907, in the office of the county recorder of Santa Cruz County, all of her interest in the said lands and premises aforesaid.

27a. These defendants further aver that the Superior Court of the State of Arizona, for the county of Pima, is, under the Acts of Congress and the constitution and laws of the State of Arizona, the successor of the District Court of the First Judicial

District of the Territory of Arizona in and for the county of Pima, being the court mentioned and referred to in section 26 of the answer herein; and that the said Superior Court as the successor of said District Court had and has jurisdiction in the said case of John Ireland and Wilbur H. King against David W. Bouldin, and against Leo Goldschmidt, administrator of the estate of David W. Bouldin, aforesaid, and has jurisdiction in the matter of the judgment and order of sale and in the matter of the execution of the said judgment and order of sale in said case, and in all other matters in which it is necessary that jurisdiction should be exercised therein; and these defendants further aver that the deed executed by the said Lyman W. Wakefield, as sheriff as aforesaid, was defective in divers and sundry of its recitals and in other particulars, and that it became necessary that a new and correct deed be executed by the sheriff of said Pima County, in lieu and in place thereof, and in order to correct the defects of said deed aforesaid; that on or about the 30th day of September, 1914, the said Joseph E. Wise did file his petition with the said Superior Court of the State of Arizona, aforesaid, wherein he did set forth the fact that he was the successor in [57] interest of the said Wilbur H. King of the property sold by the said sheriff, R. N. Leatherwood, under the order of said court, as aforesaid, and did set forth that the said property was duly sold by the said R. N. Leatherwood, the then sheriff of said Pima County, as aforesaid, on the 31st day of July, 1895, to the said Wilbur H. King, and that sheriff's certificate of sale was

duly issued to said King, and that no redemption from said sale has been made, and that thereafter and on or about the 16th day of January, 1889, the said Lyman W. Wakefield, the then sheriff of said county of Pima, did execute and deliver to said Wilbur H. King, what purported to be a sheriff's deed upon said sale, which said deed was defective in divers and sundry particulars, in said petition set forth, and did set forth various other matters and things and did pray for the order of said court authorizing and directing John Nelson, who then was the duly elected, qualified and acting sheriff of said Pima County, to execute, acknowledge and deliver to said Joseph E. Wise, a proper deed, conveying to him, as the grantee and successor in interest of said King, all of the right, title and interest in the said property aforesaid, levied upon and attached, foreclosed and sold under said order and judgment of said court, as aforesaid; that thereafter, and on the 1st day of October, 1914, the said Superior Court, aforesaid, did make and enter its order in the said case, aforesaid, wherein and whereby it did find the said matters and facts to be as hereinabove alleged in regard to said matter, and did authorize and direct the said John Nelson, the then sheriff of said Pima County, to execute, acknowledge and deliver to the said defendant, Joseph E. Wise, his deed, as such sheriff, conveying to the said [58] Joseph E. Wise all of the property and all of the right, title and interest in and to the said property, aforesaid, so sold by the said R. N. Leatherwood, sheriff as aforesaid, under the said judgment and order of sale of the said District

Court, aforesaid; a copy of which said order of the said Court is hereto annexed and marked Defendant Wise exhibit "A," and is made a part hereof; that thereafter, and on the 5th day of October, 1914, the said John Nelson, the then sheriff of said county of Pima, did, in accordance with the said order of said Court, and also by reason of the fact that this defendant is the grantee and successor in interest of said Wilbur H. King, as aforesaid, and was entitled to a deed, as such successor in interest to the property so sold under the said judgment and order of sale, aforesaid, make, execute, acknowledge and deliver unto this defendant, Joseph E. Wise, his deed, wherein he, the said sheriff, did grant, bargain, sell and convey unto defendant Joseph E. Wise, as the grantee and successor in interest of the said Wilbur H. King, all of the right, title and interest of the said David W. Bouldin, as the same existed on the 14th day of March, 1893, and all the right, title and interest which said David W. Bouldin had on said 14th day of March, 1893, in and to the said Baca Float No. 3, now situate in the county of Santa Cruz, State of Arizona, and heretofore situate in the county of Pima, Territory of Arizona, and specifically described according to the 1863 location thereof, and as described in section 2 of the bill of complaint herein; and that said defendant has caused said deed to be duly recorded in the office of the county recorder of said Santa Cruz County, State of Arizona.

[59]

28. These defendants further aver that said Joseph E. Wise was an innocent purchaser for a val-

uable consideration and without notice of any agreement or alleged agreement between the said David W. Bouldin and the said John Ireland and Wilbur H. King, or any of them, wherein and whereby the said Ireland and King agreed to rescind the transaction in which the deed executed by said Bouldin to said Ireland and King on or about February 21, 1885, and referred to in paragraph 21 of the complaint was given, and the said defendant Joseph E. Wise had no notice or knowledge of any of the matters or things alleged in said complaint, by virtue of which the said David W. Bouldin or anyone claiming under him would have right whatsoever to rescind the transaction in which said Bouldin gave him said deed to said Ireland and King, or would give said Bouldin, or anyone claiming under him the right to rescind the said deed; and in this behalf these defendants further aver that more than 20 years have elapsed since the said alleged cause of action for the rescission of said deed or of said agreement or of said transaction between the said David W. Bouldin and the said John Ireland and Wilbur H. King arose, *it it* ever did arise, and that this suit or any other suit to rescind said agreement or of said deed of said transaction is barred by the statute of limitations of the said State of Arizona; and that these plaintiffs and all persons under whom they claim title have been guilty of such laches as to bar them from any relief whatsoever in the said matter, and that they are now barred and estopped from asserting or claiming any such relief. And these defendants further aver that under and by virtue of the judgment rendered by the

District Court of the [60] Territory of Arizona, in and for Pima County, aforesaid, in the said suit and action of John Ireland and Wilbur H. King against David W. Bouldin, aforesaid, these plaintiffs, and all other persons claiming under the said David W. Bouldin, are estopped from questioning any matters or things decided by the said judgment aforesaid, and particularly any of the matters or things pertaining to the rescission of the transaction wherein or whereby the said David W. Bouldin did execute his deed to said John Ireland and Wilbur H. King, or as to any defense which the said David W. Bouldin, or his said administrator might have had to the said action aforesaid.

29. These defendants further aver that the deed which was executed by David W. Bouldin and his wife on or about October 16, 1888, and referred to in paragraph 15 of the complaint herein and being executed to David W. Bouldin, Jr., and Powhatan W. Bouldin, did not convey or pretend to convey any part of the said Baca Float according to said valid location; and as described in paragraph 2 of the complaint; but did convey and pretend to convey the piece of land described and hereinbefore referred to as the 1866 location. And they further aver that the deed executed by said David W. Bouldin to Powhatan W. Bouldin and James E. Bouldin, of date August 23, 1892, and mentioned and referred to in paragraph 17 of said complaint did not convey or purport to convey any other land or premises than the land described in said invalid location of 1866 aforesaid; therefore that at the time of his death

said Bouldin was the owner of all of the said undivided  $\frac{2}{3}$  interest in said lands, according to the valid location thereof, except the undivided  $\frac{1}{9}$  interest of his said [61]  $\frac{2}{3}$  interest which he conveyed before he died to John Ireland and Wilbur H. King as hereinbefore fully alleged and set forth, and that the said Wilbur H. King under and by virtue of the sheriff's deed executed to him as aforesaid, did at the date of said deed become the owner of all of the interest in said property which the said David W. Bouldin had at the date of the levy of said writ of attachment, aforesaid, to wit, March 14, 1893.

30. Defendant Joseph E. Wise further avers that upon the execution and delivery to him of the said deeds by the said Wilbur H. King and said Mrs. A. M. Ireland, and upon the recording thereof, to wit, on or about the 2d day of May, 1907, he did enter into the adverse and peaceable possession of the said Baca Float No. 3, claiming all of the right, title and interest thereto which was conveyed to him by said deeds aforesaid, and being an undivided  $\frac{2}{3}$  interest therein, and that ever since the said 2d day of May, 1907, he has been in the peaceable and adverse possession thereof, claiming title under the said deeds aforesaid, which were duly recorded as aforesaid, as against any person whatsoever except as against the undivided  $\frac{1}{3}$  interest in said lands and premises which the said heirs aforesaid of said John S. Watts did not convey to said David W. Bouldin, and except as against any and all persons who were the grantees or successors in interest of the said heirs of John S. Watts in and to the said undivided  $\frac{1}{3}$  interest in

said land and premises, which were so retained by said heirs of John S. Watts under the deed executed by them to said David W. Bouldin.

31. These defendants further aver from the creation by Act of Congress of the Territory of Arizona, [62] up to the 15th day of March, 1899, the lands and premises mentioned and described in plaintiff's complaint and all thereof and all of the property in dispute in this action was situate within the limits of the county of Pima; that on the 15th day of March, 1899, the legislative assembly of the Territory of Arizona, did enact an act entitled "An Act to create the county of Santa Cruz," which said act was approved on the 15th day of March, 1899, and became a law on said day, and that under and by virtue of the said act, aforesaid, the county of Santa Cruz was created out of the Southern part of said Pima County, and that the said Baca Float No. 3 and all the lands in dispute in this action and mentioned and described in the complaint herein, and in this Answer, did become situate within the limits of said county of Santa Cruz on the 15th day of March, 1899, and thereafter and are now situate within the limits of said county of Santa Cruz.

32. Defendants further aver that the deed or pretended deed or other instrument in writing, which the plaintiffs in their complaint allege was executed on the 3d day of August, 1899, by Alex F. Mathews and S. A. M. Syme, to Arizona Copper Estate, an alleged corporation, was not recorded and never has been recorded in the said county of Santa Cruz; and they further aver that the deed or mortgage or other in-

strument in writing which said plaintiffs in their complaint allege was executed by said Arizona Copper Estate to the said Alex F. Mathews and S. A. M. Syme, either individually or as trustees, a copy of which is annexed to plaintiff's complaint and marked exhibit "D," never was recorded in the said county of Santa Cruz, and is not of record in said county; defendants further [63] aver that defendant Joseph E. Wise, at the time that he purchased the interest of said Wilbur H. King and of said Mrs. A. M. Ireland and at the time that the irrespective deeds were executed and delivered to him, and at the time that the same were recorded by him, as aforesaid, did not have any knowledge or notice of the execution of the said deed from Alex F. Mathews and S. A. M. Syme to the Arizona Copper Estate, and did not have any knowledge or notice of the execution of said deed or deed of trust or mortgage, aforesaid, executed by said Arizona Copper Estate to said Alex. F. Mathews and S. A. M. Syme, and had no notice or knowledge of any of the matters or things set forth or alleged in paragraph 24 of plaintiff's complaint; and they aver that the said defendant, Joseph E. Wise, was an innocent purchaser for a valuable consideration and without notice of either of said deeds or instruments in writing or of said matters or things aforesaid, and therefore, that said deed and the said trust deed or mortgage is each invalid and void as to the said defendant Joseph E. Wise.

33. And defendant Joseph E. Wise further avers that he has been in the peaceable and adverse pos-

session of the said lands and premises aforesaid, using and enjoying the same and paying all taxes that were lawfully levied against the same, claiming under the said deeds aforesaid, duly recorded as aforesaid, for a period of more than five years prior to the commencement of this action, and that this action, as against his claim, right and title to an undivided  $\frac{2}{3}$  interest in and to the said Baca Float No. 3, according to the valid location thereof, is barred by the provisions of section 697 of the Revised Statutes of the State of Arizona, of 1913, and is further barred by the provisions of [64] section 695 and also is barred by the provisions of section 696 of the said Revised Statutes of the State of Arizona; and he further avers that he has been in such peaceable and adverse possession under color of title for more than five years prior to the commencement of this suit.

34. These defendants further aver that plaintiff's cause of action to have the deed dated January 8, 1870, from John S. Watts to Christopher E. Hawley and as described and referred to in paragraph 6 of the complaint herein, reformed in any particular is barred by the provisions of section 710 and also by the provisions of Sec. 716, and also by the provisions of Sec. 718 of the said Revised Statutes of the State of Arizona. Further answering each and every allegation in the bill with reference to the instrument executed by John S. Watts in favor of Christopher E. Hawley, copy of which is attached as exhibit "A" to the bill, this defendant avers that no attachment, demand, or request in the form of proceedings at law or in equity, or otherwise, was ever made, begun,

or instituted by said Christopher E. Hawley, or any person or persons claiming by, from, through or under him, to have said instrument reformed or corrected in any way, but that more than forty years have passed since said instrument was executed and delivered, and that said Christopher E. Hawley and all persons claiming by, from, through, or under him, including the plaintiffs, have been guilty of gross laches in not seeking to reform or correct said instrument, in case it did not express the true meaning of the parties, and that any attempt to do so is now barred by every statute or rule of limitation of the State of Arizona, or of the former territory of Arizona, or of the [65] United States of America; and this defendant avers that he is informed and verily believes that said Christopher E. Hawley, and all persons claiming by, from, through or under him, never contended or believed that said instrument covered anything except the interest of said John S. Watts in that Baca Float No. 3, known as the attempted amended location of 1866, until the rejection of said location in 1899.

35. Defendants further aver that each and all of the causes of action alleged or attempted to be alleged or set forth in plaintiff's complaint are barred by the Statute of Limitations of the State of Arizona.

36. The defendant, Joseph E. Wise, further avers that for eighteen years prior to his obtaining his deeds from the said Wilbur H. King and Mrs. A. M. Ireland, and at the time that he obtained the first of said deeds, he had been continuously to wit, from

the year 1889 down to the time he obtained the first of said deeds, in peaceable and adverse possession of the following tracts of land, situate within the limits of the said Baca Float No. 3, according to the valid location thereof, to wit: The east half ( $\frac{1}{2}$ ) of the northwest one-fourth ( $\frac{1}{4}$ ) and the west half ( $\frac{1}{2}$ ) of the northeast one-fourth ( $\frac{1}{4}$ ) and the west half ( $\frac{1}{2}$ ) of the northwest one-fourth ( $\frac{1}{4}$ ) of section 35, township 22 S., of Range 13 E., G. & S. R. B. & M., and containing 340 acres; also Sec. 36 in the said township 22 S., of R. 13 E., containing 640 acres, cultivating, using and enjoying the same during all of said times; and at the time that he obtained his said deeds from said Ireland and King, aforesaid, he claimed to be the owner of said lands and premises aforesaid, under and by virtue of his adverse possession; and that said adverse possession had ripened [66] into a title under thestatute of limitations of the then Territory, now State of Arizona, at the time he acquired his said deeds from said Ireland and King, and that ever since said date he has claimed and does now claim to be the sole owner of all of the said tracts of land, herein just above described; and he further avers that plaintiff's action or cause of action for the tracts of land aforesaid, is barred by the statute of limitations.

And the defendant Lucia J. Wise does allege that she is a daughter of Mary E. Sykes; that said Mary E. Sykes died on or about the 11th day of May, 1911; that the said Mary E. Sykes, at the date of her death, was in possession and for a continuous period of more than 10 years prior to her death, had been in the

peaceable and adverse possession of the following tract of land, situate within the limits of the said Baca Float No. 3, and within the limits of the lands claimed by plaintiffs, to wit: The northwest quarter ( $\frac{1}{4}$ ) of the northwest quarter ( $\frac{1}{4}$ ) of section one (1), township twenty-three (23) south, of range thirteen (13) east, Gila and Salt River Base and Meridian, cultivating, using and enjoying the same; and that this defendant, Lucia J. Wise, as one of the heirs of the said Mary E. Sykes, and as executrix of the will of said Mary E. Sykes, and as successor in interest to the said Mary E. Sykes, ever since the death of the said Mary E. Sykes, as aforesaid, has been in the peaceable and adverse possession of the said tract of land just above described, cultivating, using and enjoying the same; and that the plaintiffs cause of action as against the defendant Lucia J. Wise, as to the said tract of land just described is barred by the Statute of Limitations of the State of Arizona, and [67] is barred by the provisions of section 698 of the Revised Statutes of Arizona of 1913.

37. These defendants deny that the plaintiffs, or either of them are in the possession of said lands.

WHEREFORE these defendants pray judgment against the plaintiffs and each of them.

1. That the plaintiffs and each of them have and take nothing by this action and that all relief be denied to them.

2. That the defendant Joseph E. Wise be decreed to be the owner of an undivided  $\frac{2}{3}$  interest plus an undivided  $\frac{1}{18}$  interest in and to the said Baca Float

No. 3, bounded and described as follows: Commencing at a point one mile and a half from the base of the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point, west twelve miles, thirty-six chains and forty-four links; thence south twelve miles thirty-six chains and forty-four links; thence east twelve miles, thirty-six chains and forty-four links; and thence north twelve miles, thirty-six chains and forty-four links to the place of beginning, in the county of Santa Cruz, State of Arizona, and according to the official survey of said Baca Float No. 3, as approved and adopted by the Government of the United States.

3. That the defendant Joseph E. Wise be decreed to be the owner of all the following pieces of land situate within the limits of said Baca Float No. 3 aforesaid, to wit: The east half of the northwest quarter, the west half of the northeast quarter, and the west half of the northwest [68] quarter of section thirty-five and all of section thirty-six in township twenty-two south, of Range 13 East, G. & S. R. B. & M., and that his title thereto be quieted.

4. That the defendant Lucia J. Wise be decreed to be the owner of all of the following tract of land situate within the limits of said Baca Float No. 3, to wit: The northwest quarter of the northwest quarter of section one, township 23 south, of Range 13 East, G. & S. R. B. & M.

5. That these defendants may have such other, further and general relief as the circumstances of the

case require and as may be meet and equitable and do recover their costs.

SELIM M. FRANKLIN,  
Attorney and Solicitor for Defendants, Joseph E.

Wise and Lucia J. Wise.

Verified January 21, 1915.

Exhibit "A" being included in Defendants Wises Exhibit 19.

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**Amended Answer of Defendants Bouldin.**

Filed March 26, 1915.

To the Honorable, the Judge of the District Court of the United States in and for the District of Arizona:

The answer of James E. Bouldin and Jennie N. Bouldin, defendants to the bill of complaint and answer of David W. Bouldin and Helen Lee Bouldin, infants under the age of twenty-one years, by their guardian *ad litem*, Edwin F. Jones, of Tucson, Arizona.

These defendants, saving and reserving unto themselves the benefit of all exceptions to the errors and imperfections in said bill contained, for answer to so much thereof [69] as they are advised it is necessary or material for them to answer unto, do aver and say that:

1. They admit the allegations of paragraph one of the bill of complaint.
2. They admit the allegations of paragraph two of the bill of complaint.
3. They admit the allegations of paragraph three of the bill of complaint.

4. They admit the allegations of paragraph four of the bill of complaint.

5. They admit the allegations of paragraph five of the bill of complaint, except that they say, that certain persons who were heirs of Luis Maria Baca did execute and deliver to David W. Bouldin certain quitclaim deeds, a copy of one of which is attached to the bill of complaint marked exhibit "B" and by reference made a part thereof. They say that these persons were heirs of Luis Maria Baca and these deeds conveyed to David W. Bouldin whatever interest remained in these heirs, if there was any; after the deeds from the heirs of Baca on May 1, 1864, to John S. Watts, and on May 30, 1871, to John S. Watts mentioned in paragraph five and eleven of the bill of complaint.

6. They admit that on or about January 8, 1870. John S. Watts, by his deed duly executed and acknowledged, conveyed to Christopher E. Hawley, Baca Float No. 3, but they say that the said deed described in paragraph six of the bill of complaint was not filed for record until May 9, 1885; that the said John S. Watts died sometime prior to the 30th day of September, 1884; that David W. Bouldin, without notice actual or constructive, of the said [70] deed of January 8, 1870, purchased, for a valuable consideration, a two-thirds undivided interest in Baca Float No. 3, as it is described in paragraph two of the bill of complaint, from the heirs of the said John S. Watts, and said heirs did make, execute, and deliver to said David W. Bouldin their good and sufficient deed, bearing date of September 30, 1884, con-

veying to the said David W. Bouldin, an undivided two-thirds interest in said property, and the same was thereafter recorded in the office of the county recorder of Pima County, Arizona.

7. They admit the allegations of paragraph seven of the bill of complaint.

8. They admit the allegations of paragraph eight of the bill of complaint, except that they say, that if John S. Watts did not convey Baca Float No. 3, as it is described in paragraph two of the bill of complaint, by his deed to Christopher E. Hawley, dated January 8, 1870, then certain persons who were all his heirs did, as alleged in paragraph 6 of this answer, convey a two-thirds undivided interest in Baca Float No. 3, as it is described in paragraph two of the bill of complaint, to David W. Bouldin by deed dated September 30, 1884, a copy of which is attached to the complaint in this cause marked exhibit "C" and by reference made a part thereof.

9. They neither admit or deny the allegations of paragraph nine of the bill of complaint, so far as the same relate to the construction of the deed of January 8, 1870, but say that if the construction put upon the said deed dated January 8, 1870, from John S. Watts to Christopher E. Hawley by the allegations of paragraphs eight and nine of the bill of complaint is not the correct one, then [71] the deed from the heirs of John S. Watts to David W. Bouldin dated September 30, 1884, is a valid and binding conveyance of an undivided two-thirds interest in Baca Float #3, as it is described in paragraph two of the bill of complaint. And they further say that even if

such construction is correct that the deed of September 30, 1884, to David W. Bouldin, was as hereinbefore alleged, a conveyance to an innocent purchaser for value without notice; and that it was executed and delivered before the deed of January 8, 1870, from John S. Watts to Christopher E. Hawley was recorded, and that for that reason it is superior to the deed of January 8, 1870, from John S. Watts to Christopher E. Hawley. They further say that they have no information or knowledge sufficient to form a belief as to the existence of the title bond mentioned in said paragraph nine, and therefore deny each and every allegation in that behalf in said complaint contained.

10. They admit the allegations of paragraph ten of the bill of complaint.

11. They admit the allegations of paragraph eleven of the bill of complaint, except that they say, that if the deed of May 30, 1871, from the heirs of Luis Maria Baca to John S. Watts did not inure to the benefit of Christopher E. Hawley and did not cure any defect that might have existed from the manner in which the deed to John S. Watts of May 1, 1864, was executed on behalf of some of the heirs of Luis Maria Baca, then the deeds from the heirs of Luis Maria Baca to David W. Bouldin mentioned in paragraphs five and twelve of this answer conveyed whatever interest remained in these heirs after the said deed of May 30, 1871, to David W. Bouldin. And they further say that if the deed [72] from the heirs of Baca to John S. Watts dated May 30, 1871, did not inure to the benefit of Christopher E. Hawley,

then the deed of September 30, 1884, from the heirs of John S. Watts to David W. Bouldin conveyed to David W. Bouldin an undivided two-thirds of whatever interest was conveyed by the deed of May 30, 1871, from the heirs of Baca to John S. Watts.

12. They admit the allegations of paragraph twelve of the bill of complaint, except as hereinafter denied, and except that they say that certain persons who were the heirs of Luis Maria Baca, did execute to David W. Bouldin, certain quitclaim deeds, one of which is attached to the bill of complaint, marked exhibit "B," and by reference made a part thereof. and they say that these persons were heirs of Luis Maria Baca, and that said deeds conveyed whatever interest remained in them after the deeds from the heirs of Baca, dated May 1, 1864, and May 30, 1871, to John S. Watts, mentioned in paragraphs five and eleven of the bill of complaint; and they further say that the persons who executed the deed dated September 30, 1884, from the heirs of John S. Watts to David W. Bouldin, were all the heirs of said John S. Watts, and that said deed conveyed from them to David W. Bouldin an undivided two-thirds of whatever interest was in them at that time in Baca Float No. 3, as it is described in paragraph two of the bill of complaint. They deny that David W. Bouldin did not perform the agreements which were made on his part as the same are set forth in said deeds from the heirs of Baca to David W. Bouldin and from the heirs of John S. Watts to David W. Bouldin, and they further say that any promises or agreements made by the said [73] Bouldin to the said heirs of

Baca, or to the heirs of John S. Watts, do not inure to the benefit of these plaintiffs, and should it be held that said promises did so inure to the benefit of these plaintiffs, then defendants plead that plaintiffs have been and are guilty of gross laches. And they further say that the deed of September 30, 1884, from the heirs of John S. Watts to David W. Bouldin, is superior to the deed of January 8, 1870, from said John S. Watts to Christopher E. Hawley, for the reason that the deed from John S. Watts to Hawley was not filed for record until May 9, 1885, while the deed from the heirs of said Watts to David W. Bouldin was executed and delivered on September 30, 1884, and prior to the recordation of the deed from Watts to Hawley, and that David W. Bouldin was an innocent purchaser for value, without notice.

13. They admit that on or about June 8, 1885, John C. Robinson entered into an agreement with David W. Bouldin, but deny that the said agreement was impossible of performance in its inception and at all times, or was void, and deny that David W. Bouldin never became entitled to half or any interest under the said agreement and in any land whatever. They further admit that prior to June 8, 1885, John C. Robinson had become the owner of whatever title was conveyed to the land described in paragraph two of the bill of complaint by deed of January 8, 1870, from John S. Watts to Christopher E. Hawley, except in so far as David W. Bouldin acquired title to the said land by the deeds of January 14, 1878, from certain of the heirs of Luis Maria Baca to David W. Bouldin and the deed of September 30, 1884, from

the heirs of John S. Watts to David W. Bouldin.

. . .

14. They neither admit or deny that on or about [74] October 6, 1887, David W. Bouldin executed an instrument in the form of a mortgage whereby he mortgaged to W. G. Rifenburg, 12,500 acres in the northwest quarter of Baca Float No. 3, according to the survey of said Float by George J. Roskruge, County Surveyor of Pima County, Arizona, in September, 1887, to secure a promissory note for \$5,000.00, payable in twelve months thereafter at one per cent per month interest and five per cent attorney's fees. They further allege on information and belief that if this mortgage was executed it has been paid, or otherwise settled and discharged.

15. They admit the allegations of paragraph fifteen of the bill of complaint.

16. They admit the allegations of paragraph sixteen of the bill of complaint, except that they deny that this instrument was made on the sole consideration of the agreement of June 8, 1885. They deny that it was made under a mutual mistake of fact, and is, therefore, void; and deny that it was without consideration and therefore void; but they say that it was a valid and subsisting conveyance of an undivided half of whatever interest John C. Robinson had in Baca Float No. 3, as it is described in paragraph 2 of the bill of complaint. . . . A copy of the said instrument is attached to this answer marked exhibit "M" and by reference made a part hereof.

17. They admit the allegations of paragraph seventeen of the bill of complaint, except that they

say, that the deed of August 23, 1892, from David W. Bouldin to Powhatan W. Bouldin and James E. Bouldin further described the tract of land conveyed thereby as: "Being known as location #3 of the Baca Series." A copy of the deed dated [75] August 23, 1892, from David W. Bouldin to Powhatan W. Bouldin and James E. Bouldin is attached to this answer marked exhibit "N" and by reference made a part hereof.

18. They admit that on or about November 19, 1892, John C. Robinson executed the deed described in paragraph eighteen of the bill of complaint; but they deny that the said instrument was invalid for any reason whatever, and say that it was a valid conveyance and that it did convey to Powhatan W. Bouldin and James E. Bouldin all the interest which John C. Robinson had in the north half of Baca Float #3, as it is described in paragraph two of the bill of complaint. They further say that this instrument cannot be attacked at this late day by these plaintiffs, because of their gross laches and delay. They further say that these plaintiffs cannot attack this deed for the reason that John C. Robinson was the proper party to attack it, if it be attacked at all. And for the further reason that the land conveyed by his deed has since been conveyed to a *bona fide* purchaser for value without notice. A copy of the deed dated November 19, 1892, from John C. Robinson to Powhatan W. Bouldin and James E. Bouldin is attached to this answer, marked exhibit "O" and by reference made a part hereof.

19. They admit the allegations of paragraph nine-

teen of the bill of complaint.

20. They have not sufficient information upon which to form a belief as to whether John C. Robinson gave to S. A. M. Syme the power of attorney described in paragraph twenty of the bill of complaint, and therefore they deny each and every allegation contained in said paragraph.

21. They admit that on or about February 21, 1885, David W. Bouldin executed an instrument in the form of a [76] deed whereby he undertook to convey to John Ireland and Wilbur H. King, the undivided one-third of one-third of all right, title and interest owned and possessed by the said David W. Bouldin in the land described in paragraph two of the bill of complaint; but deny that at that time David W. Bouldin had no right, title, or interest in the said land. They admit that prior to May 2, 1895, David W. Bouldin and John Ireland and Wilbur H. King agreed to rescind the transaction in which the said deed was given and admit that David W. Bouldin gave to John Ireland and Wilbur H. King his note for the money which had been paid him by the said Ireland and King, and that the said Ireland and King gave the said Bouldin a bond to reconvey the said land to him. They admit that this note was not paid when due but deny that on May 2d, 1895, any valid judgment was rendered by the District Court for the First Judicial District of the Territory of Arizona, on said note in favor of the said Ireland and King, and against Leo Goldschmidt, as administrator of the estate of the said David W. Bouldin, deceased, foreclosing the attachment lien described in the said

attempted judgment. They further deny that under and on any valid execution issued on said judgment, the sheriff of Pima County sold and conveyed to the said Wilbur H. King all the right, title and interest of Leo Goldschmidt, as such administrator in and to the lands described in paragraph 2 of the bill of complaint, on July 31st, 1895. They further say that whatever interest David W. Bouldin, Sr., took or had in the premises described in paragraph 2 of the bill of complaint, was taken and held in trust by the said David W. Bouldin, Sr., for his sons, and that John Ireland and Wilbur H. King at all times had notice of said trust and that said Wilbur H. King particularly had notice of said trust on and prior to the 31st [77] day of July, 1895. They further say that the District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, was wholly without jurisdiction to render the judgment on May 2d, 1895, against Leo Goldschmidt, as administrator of the estate of David W. Bouldin, foreclosing any attachment lien against the property of the said David W. Bouldin, for the reason that the plaintiffs in said suit did not in their complaint, or in any amendment thereto, waive recourse against any other property of the estate of the said David W. Bouldin, deceased, as required by the statutes of the then Territory of Arizona, in such cases made and provided.

They further say that on or about July 5th, 1895, the sheriff of Pima County did attempt to levy upon and seize whatever interest David W. Bouldin had on that date in certain lands, and that the said sheriff

did advertise for sale, thereafter, the interest of Leo Goldschmidt as administrator of the estate of David W. Bouldin, in and to said lands, and whatever interest David W. Bouldin had at the time of his death. They further say that on or about July 31st, 1895, the said sheriff did attempt to sell whatever interest Leo Goldschmidt, as administrator of the estate of David W. Bouldin, had in the said lands on that date, which was nothing, and on January 16th, 1899, the sheriff of Pima County did attempt to convey to Wilbur H. King, the purchaser at such sale, whatever interest Leo Goldschmidt, as administrator of the estate of David W. Bouldin, had in the said lands on July 31st, 1895, or at any time thereafter, which interest was nothing. [78]

They admit that on or about April 8, 1907, the widow of John Ireland executed the quitclaim deed described in paragraph twenty-one of the bill of complaint to Joseph E. Wise, and that on or about April 24, 1907, Wilbur H. King executed the quitclaim deed described in paragraph twenty-one of the bill of complaint; but say that these deeds conveyed nothing for the reason that by the title bond which John Ireland and Wilbur H. King gave to David W. Bouldin they held whatever interest they took under the deed of February 21, 1885, from David W. Bouldin to them in trust for the said David W. Bouldin.

22. They admit the allegations of paragraph twenty-two of the bill of complaint.

23. They admit the allegations of paragraph twenty-three of the bill of complaint, except that they say, that if any title to Baca Float No. 3, as it is de-

scribed in paragraph two of the bill of complaint, remained in the heirs of John S. Watts after the deed of John S. Watts to Christopher E. Hawley dated January 8, 1870, then certain persons who were all the heirs of John S. Watts conveyed an undivided two-thirds interest in Baca Float No. 3, as it is described in paragraph two of the bill of complaint, to David W. Bouldin by deed dated September 30, 1884.

23-a. They admit the allegations of paragraph twenty-three-a of the bill of complaint.

24. They have no knowledge of the allegations of paragraph twenty-four of the bill of complaint, as the same is amended, except that they deny that prior to August 3, 1899, Alex. F. Mathews and S. A. M. Syme by mesne conveyances had become the owners of the land conveyed by John S. Watts to Christopher E. Hawley, by the deed, exhibit "A," referred [79] to in paragraph six of the bill of complaint; but say that at that time and since November 12, 1892, Powhatan W. Bouldin and James E. Bouldin, and their grantees and assignees were and had been the owners of whatever title was conveyed by John S. Watts to Christopher E. Hawley by the deed, exhibit "A," to the north half of the said land.

25. They have no knowledge of the allegations of paragraph twenty-five of the bill of complaint.

26. They have no knowledge of the allegations of paragraph twenty-six of the bill of complaint, except that they deny that S. A. M. Syme, and the heirs, devisees and legal representatives of Alex F. Mathews sold and conveyed the land conveyed by the deed from Watts to Hawley referred to in paragraph

six of the bill of complaint to the plaintiffs; but say that at that time and since November 12, 1892, Powhatan W. Bouldin and James E. Bouldin, and their assignees and grantees, have been and are the owners of the north half of the said land, and they deny that these plaintiffs have been since February 8, 1907, and are now, the owners of the north half of the said land.

27. These defendants pray leave upon the hearing to refer to the originals or copies of the various deeds, agreements or other instruments in this answer mentioned, described or referred to as the same may be produced upon said hearing for a more detailed, particular and accurate description thereof, and for proof of the allegations in reference thereto.

28. They deny that the plaintiffs are in possession of the said land.

29. Further answering the said complaint, these defendants aver that on or about the 14th day of January, 1878, [80] the following persons, to wit, Maria Estapana Gorduna, Jesus Maria Baca, Inez Baca, Nepomuceno Baca, Manuel Baca, Juan Baca, Rafael Parado, Dolores de Parado, Jesus M. Baca, Miguel Baca, Nepomuceno Baca, Apolonia Baca de Adamson, Jacinto Barreyesa, and Palencia Baca, being heirs and descendants of heirs of said Luis Maria Baca, did, by deeds duly executed and acknowledged, and thereafter and on the 25th day of March, 1885, duly recorded in the county of Pima, State of Arizona, convey unto David W. Bouldin an undivided two-thirds of all their right, title and interest in and to said Baca Float No. 3, as the same

is described in paragraph two of the bill of complaint, and that under and by virtue of said deeds, the said David W. Bouldin became the owner of a very large interest in and to said Baca Float No. 3.

30. That the said John S. Watts mentioned in the complaint, to whom was executed and delivered by the heirs of Luis Maria Baca the various deeds mentioned in the complaint as having been executed and delivered to him, died some time prior to the 30th day of September, 1884, leaving as his heirs John Watts, J. Howe Watts, Elizabeth Watts, Fannie A. Bancroft, Mary A. Wardwell, Louise Wardwell, A. L. Bancroft and Atwater Wardwell; that on the 30th day of September, 1884, the said heirs aforesaid of the said John S. Watts, being the sole owners as such heirs of all interest in the said Baca Float No. 3 aforesaid, which was in John S. Watts at the time of his death, did, for a valuable consideration execute and deliver to David W. Bouldin their deed dated on that day, wherein they granted, sold, and conveyed unto the said David W. Bouldin an undivided two-thirds interest in and to said lands and premises. And [81] these defendants further aver that the deed which plaintiffs allege in their complaint was executed by the said John S. Watts to Christopher E. Hawley on or about January 8, 1870, was not filed for record until the 9th day of May, 1885; that the said David W. Bouldin at the time he purchased the said premises from the said heirs of the said Watts was without notice of the said deed from the said Watts to the said Hawley, and was therefore an innocent purchaser for value,

and the said deed of the said Watts to the said Hawley was of no force or effect against the right, title and interest which the said Bouldin acquired under and by virtue of his said deed dated September 30, 1884.

31. And these defendants further aver that on June 28, 1892, and on November 19, 1892, one John C. Robinson, having acquired such title to said premises as was conveyed by said John S. Watts to Christopher E. Hawley by the deed dated January 8, 1870, mentioned in the complaint, for a valuable consideration sold and conveyed to Powhatan W. Bouldin and James E. Bouldin the north half of Baca Float No. 3, it being the intention of the said Robinson and of the grantees in said deeds, that said deeds should convey, and they did convey the north half of said Baca Float No. 3 as it finally was approved by the proper officers of the United States, as the same is described in paragraph two of the complaint.

32. That by reason of certain mesne conveyances the title to the said north half of said premises is now vested in these defendants.

WHEREFORE, these defendants pray judgment against the plaintiffs, and each of them,

(1) That the plaintiffs, and each of them, take nothing [82] by this action, and that all relief be denied to them;

(2) That these defendants be decreed to be the owners of the north half of Baca Float No. 3;

(3) That these defendants have such other, further and general relief as the circumstances of the case require, and as may be meet and equitable, and

that they have their costs.

WELDOM M. BAILEY,  
JOHN H. CAMPBELL,

Solicitors for the Defendants James E. Bouldin,  
Jennie N. Bouldin, David W. Bouldin and  
Helen Bouldin.

EDWIN F. JONES,  
Guardian *ad Litem* for the Infant Defendants, David  
W. Bouldin and Helen Bouldin.

Duly verified.

Exhibit "M" was conveyance and agreement between Robinson and P. W. and J. E. Bouldin by David W. Bouldin, as attorney in fact, dated June 28, 1892.

Exhibit "N" was deed from David W. Bouldin to P. W. and J. E. Bouldin dated August 23, 1892.

Exhibit "O" being same as Defendant Wise's Exhibit #38.

**Answer of Jesse H. and Margaret W. Wise.**

Filed October 3, 1914.

To the Honorable, the Judge of the District Court of the United States, in and for the District of Arizona, and to the Honorable District Court of the United States, in and for the District of Arizona:

Come now the defendants, Margaret W. Wise and Jesse H. Wise, and for answer to the bill of complaint of the plaintiffs herein, do make the following reply and defense [83] thereto:

1. That not having sufficient knowledge or information to form a belief, these defendants deny that all the heirs of Luis Maria Baca sold or conveyed

the said Baca Float No. 3 to said John S. Watts, as alleged in paragraph 5 in said complaint, but upon information and belief allege that some of said heirs or descendants of said heirs conveyed their interest therein to David W. Bouldin, and also to Joseph E. Wise, Jesse H. Wise and Margaret W. Wise.

2. They deny that on or about January 8, 1870, or at all John S. Watts sold or conveyed the said Baca Float No. 3, to one, Christopher E. Hawley as alleged in paragraph 6 of said complaint, or that any such deed was acknowledged or recorded; but they aver that they are informed and believe that on or about said January 8, 1870, the said John S. Watts did execute and deliver to said Christopher E. Hawley a quitclaim deed whereby he released and quitclaimed unto the said Christopher E. Hawley a copy of which is marked exhibit "A" and attached to plaintiff's bill of complaint and they deny that said deed conveyed to said Hawley said land as embraced in Baca Float No. 3. They allege that in said quitclaim deed the land is so imperfectly described that the deed is void and of no force and effect.

3. The defendants deny that John S. Watts applied to the Commissioner of the General Land Office for leave to amend the description of said Baca Float No. 3, under the belief that the change is simply an amendment of the location as made June 17, 1863, and these defendants deny that all parties interested, including the land office believe that the Baca Float No. 3 was described by the bounds or [84] the so-called amended location of 1886, as alleged in paragraph 7 in said complaint.

4. These defendants deny that the said John S. Watts intended to convey by the said quitclaim deed of January 8, 1870, exhibit "A," Baca Float No. 3, as the same is described in paragraph 2 of the said bill and they deny that John S. Watts conveyed to Christopher E. Hawley by said quitclaim deed the Baca Float No. 3 as described in paragraph 2 of said bill; they deny that the description by metes and bounds the said deed of January 8, 1870, exhibit "A," to bill was executed under the mistake and belief existing at the time said deed was made, as to the metes and bounds of the said Float as alleged in paragraph 8 of the bill. The defendants deny that the various descendants who made deeds to Joseph E. Wise and Jesse H. Wise failed to convey any right, title or interest to the land in question.

5. That the defendants claim title under the following conveyances:

(a) Deed from Ciria Salazar to Joseph E. Wise and Jesse H. Wise dated August 8, 1913; recorded September 15, 1913; Deed Book 7, page 369.

(b) Juan a. L. Baca, widow of Jose Baca, and others to Marcos C. de Baca, dated August 20. 1913; recorded August 29, 1913, Deed Book 7, page 344.

(c) Marcos C. de Baca to Joseph E. Wise and Jesse H. Wise, deed dated August 20, 1913; recorded August 29, 1913; Deed Book 7, page 352.

(d) Jesse H. Wise to Margaret W. Wise deed dated August 28, 1913; recorded August 30, 1913; Deed Book 7, page 354.

(e) Vidal N. de Mares, widow of Inez Mares, et al., to Marcos C. de Baca, deed dated August 30, 1913;

recorded [85] September 2, 1913; Deed Book 7, page 365.

(f) Teefela Baca, daughter of Jose Baca, deceased, and Felix Baca, her husband, to Marcos C. de Baca, deed dated August 20, 1913; recorded August 29, 1913; Deed Book 7, page 348.

(g) Guadalupe Mares de Sandoval et al., to Marcos C. de Baca, deed dated August 27, 1913; recorded September 15, 1913; Deed Book 7, page 363.

6. Defendants deny that the interest of plaintiffs in the said lands and premises, described in paragraph 2 of the complaint herein is upwards of \$100,000 or is of any value whatsoever; denying that the plaintiffs have any interest whatsoever except as trustees, under the said trust deed or mortgage, exhibit "D," aforesaid; and deny that the said interest is of the value of upwards of \$100,000 or is of any value whatsoever; for the reason that the notes to secure which, said trust deed or mortgage was executed are barred by the statute of limitation. Defendants further deny that plaintiffs, or either of them are entitled to possession of said land or to a part or portion thereof.

7. The defendants deny that plaintiffs are in possession of Baca Float No. 3 or any part thereof and allege and say that they the defendants together with their codefendants Joseph E. Wise and Lucia J. Wise, his wife, are in possession of a very large part of said Baca Float No. 3.

8. These defendants further allege that the deed from John S. Watts to Christopher E. Hawley of January 8, 1870, being exhibit "A" in plaintiff's bill

released and quitclaimed according to location of 1866 which is not a true [86] location of Baca Float No. 3, and therefore the said Hawley did not acquire any interest in Baca Float No. 3 except a very small strip on the northeastern corner thereof, if he, Hawley, acquired anything at all.

9. These defendants further aver that the John S. Watts deed to Hawley dated January 8, 1870, was not recorded until the 9th day of May, 1885, which was about ten months after the deed from the heirs of John S. Watts to David W. Bouldin; that the said David W. Bouldin was an innocent purchaser for a valuable consideration and without notice of the said deed from John S. Watts to Hawley, and therefore, in any event the said deed is invalid and of no effect as against the right of David W. Bouldin acquired under his deed dated September 30, 1884,

10. The defendants claim title from the Government to the heirs of Luis Maria Baca and then by deed from the heirs of Luis Maria Baca recited aforesaid in paragraph 5 of this answer.

11. The defendants deny each and every allegation of the plaintiffs set forth in their bill that is not herein admitted.

Wherefore, these defendants pray judgment against the plaintiffs and each of them:

1. That the plaintiffs and each of them have and take nothing by this action, and that all relief be denied to them.

2. That the defendant Margaret W. Wise be decreed to be the owner of undivided 1/25 interest in and to the said Baca Float No. 3, bounded and de-

scribed as follows: Commencing at a point one mile and a half from the base of the Salero Mountains in a direction north 45 degrees, [87] east of the highest point of said mountain; running thence from said beginning point west 12 miles 36 chains and 44 links; thence south 12 miles, 36 chains, and 44 links; and thence north 12 miles, 36 chains and 44 links; to the place of beginning, in the county of Santa Cruz, State of Arizona.

3. That these defendants may have such other, further and general relief as the circumstances in the case require and as may be meet and equitable and do recover their costs.

JAMES R. DUNSEATH,

Attorneys and Solicitors for Defendants Jesse H. Wise and Margaret W. Wise.

Verified September, 1914.

**Answer of Interveners, M. I. Carpenter, Pat C. Ireland, Ireland Graves, Anna R. Wilcox and Eldridge I. Hurt.**

Filed March 26, 1915.

(Pursuant to stipulation signed by all the parties.) To the Honorable, the Judge of the District Court of the United States, in and for the District of Arizona;

Comes now, M. I. Carpenter, Pat C. Ireland, Ireland Graves, Anna R. Wilcox and Eldridge I Hurt, defendants by intervention, and for answer to the bill of complaint of the plaintiffs herein, do make the following reply and defense thereto.

1. They admit the allegations of paragraph one (1) of the bill of complaint.

2. They admit the allegations of paragraph two (2) of the bill of complaint. [88]

3. They admit the allegations of paragraph three (3) of the bill of complaint.

4. They admit the allegations of paragraph four (4) of the bill of complaint.

5. Answering paragraph five (5) of the said bill of complaint, they deny that on or about May 1st, 1864, all of the heirs of Luis Maria Baca, sold and conveyed Baca Float No. 3, to John S. Watts by deed duly executed and acknowledged as alleged in said bill. They admit that some of the heirs of Luis Maria Baca did execute and convey on or about May 1, 1864, their quitclaim deed wherein they did remise, release and quitclaim unto the said John S. Watts, their respective interest in and to the said Baca Float No. 3, according to the description of said Float set forth in section two (2) of said bill; but these defendants aver that certain other heirs of the said Luis Maria Baca owning a large part of the said Baca Float No. 3, did not execute and did not sign or acknowledge the said deed, and they allege that under and by virtue of the said deed, the said John S. Watts only acquired a part interest in and to the said Baca Float No. 3.

6. They deny that on or about January 8, 1870, or at all, that the said John S. Watts sold or conveyed the said Baca Float No. 3, to Christopher E. Hawley as alleged in paragraph six (6) of said bill, or that any such deed was duly executed or acknowledged or recorded; but they aver that they are informed and believe that on or about said January 8,

1870, the said John S. Watts did execute and deliver to said Christopher E. Hawley a deed of quitclaim wherein he did remise, release and quitclaim unto said Christopher E. Hawley, the certain property therein [89] described, a copy of which deed is marked exhibit "A" and attached to plaintiff's bill of complaint, and they admit that said deed of quitclaim was duly acknowledged and recorded as alleged in said complaint; and they further deny that said deed did convey to said Hawley said Baca Float No. 3, but allege that the same did remise, release and quitclaim to said Hawley, only whatever interest the said Watts may then have had in that certain and specific piece of land which is specifically described, in said deed.

7. Answering paragraph seven (7) of said bill, these defendants deny that John S. Watts applied for leave to amend the description under the belief that it was simply an amendment of the selection and location as made on June 17, 1863, but on the contrary, these defendants aver that said location of 1866 was intended as a new or relocation of the location of June 17, 1863; and they deny that between May 21, 1866, until July 25, 1899, or at any time between said periods, all or any of the parties interested, except those claiming under the deed to Hawley as aforesaid, believed or contended that Baca Float No. 3 was described only by the metes and bounds of the so-called amended location of 1866, and they deny that the actual metes and bounds of said location of 1863, or of said location of 1866, had not been determined prior to July 25, 1899, but on

the contrary, they aver that said locations had been noted by the officials of the Land Department on its records and maps and were known to the parties claiming under the deed to Hawley, as aforesaid, for a long time prior thereto. They allege that said Hawley, or his grantees, repeatedly and continuously from 1870 to June, 1899, applied to the Land Department of the United States [90] with full knowledge of said 1863 location, for a confirmation of said location of 1866 as described in the said deed to Hawley.

8. Answering paragraph eight (8) of said bill, these defendants deny that said John S. Watts intended to convey to Christopher E. Hawley by the deed of January 8, 1870, exhibit "A," Baca Float No. 3, as the same is described in paragraph 2 of said bill of complaint; and they deny that said John S. Watts did convey to said Christopher E. Hawley by said deed of January 8, 1870, aforesaid, the said Baca Float No. 3, as described in paragraph 2 of said bill of complaint; they deny that the description by metes and bounds in said deed of January 8, 1870, exhibit "A," to plaintiffs' complaint was executed under the mistaken belief existing at the time said deed was made, as to the metes or bounds of the said Float, as alleged in paragraph 8 of said complaint, or at all.

9.. Answering paragraph nine (9) of said bill, these defendants deny that the correct construction to be put on the said deed of January 8, 1870, exhibit "A," is supported by any of the facts alleged in paragraph 9 of said complaint; and not having

sufficient information to form a belief, these defendants deny that the said John S. Watts on or about March 2, 1863, or at all, executed or delivered to one William Wrightson, as alleged in paragraph 9 of said complaint, or at all, a title bond for said Baca Float No. 3, or that prior to January 8, 1870, the said Christopher E. Hawley did become entitled to or was in possession of said title bond, or was entitled thereunder to have a fee simple title to said Baca Float No. 3, as described in paragraph 2 of said complaint, made to him; and these [91] plaintiffs, as successors in title to said Hawley, or at all, now own or possess said title bond, and further these defendants say that if the construction as claimed in said bill, be the proper construction for the said deed of January 8, 1870, from John S. Watts to Christopher E. Hawley, then that the said deed was not filed for record until May 9, 1885; that the said John S. Watts died some time prior to the 30th day of September, 1884; that David W. Bouldin, without notice, actual or constructive of the said deed of January 8, 1870, purchased for a valuable consideration, a two-thirds undivided interest in Baca Float No. 3, as it is described in paragraph two of the bill of complaint, from the heirs of the said John S. Watts, and said heirs did make, execute and deliver to said David W. Bouldin their good and sufficient deed, bearing date of September 30, 1884, conveying to the said David W. Bouldin, an undivided two-thirds interest in said property, and the same was thereafter recorded in the office of the county recorder of Pima County, Arizona.

10. Answering paragraph ten (10) of said bill, these defendants admit that on or about January 13, 1870, the said Christopher E. Hawley made a declaration of trust in which he stated that he held certain lands as trustee for James Eldredge and Charles D. Poston, and aver that the lands he so referred to were the lands described in the said deed from John S. Watts to Christopher E. Hawley, of date January 8, 1870, exhibit "A," aforesaid.

These defendants not having sufficient information to form a belief and not knowing what the terms of the said trust were, deny that the interest of said Charles D. Poston, in the lands referred to in said declaration of trust, [92] depended on a contingency which never occurred, as alleged in paragraph 10 of said complaint or at all, and deny that consequently, or at all, said interest never attached to said land, or that the said Charles D. Poston made no claim to have any interest in said land.

11. Answering paragraph eleven (11) of said bill of complaint and the amendments thereto of the plaintiffs herein, these defendants admit that on or about May 30, 1871, all of the heirs of Luis Maria Baca, except, however, those particular heirs who thereafter conveyed their interest in said Baca Float No. 3, to David W. Bouldin, as hereinafter in this answer set forth, did execute a deed to the said John S. Watts wherein they did convey to said Watts all their interest in the said Baca Float No. 3, according to the 1863 location thereof; but these defendants deny that any of the heirs ratified or confirmed the title made by them or any of them or

by their attorney Tomas Cabeza de Baca to John S. Watts, as alleged in said bill of complaint, or at all; these defendants admit that these particular heirs of said Luis Maria Baca who signed, executed and acknowledged in their own proper name the said deed of date the 1st day of May, 1864, and referred to in section 5 of the bill of complaint herein, did ratify and confirm the said deed of May 1, 1864; but they deny that any of the other heirs of said Luis Maria Baca, or that any of the heirs who did not duly sign, execute and acknowledge the said deed of May 1, 1864, did ratify or confirm the said alleged deed of 1864; and these defendants admit that all of the heirs of said Luis Maria Baca, except those heirs who thereafter conveyed their interest to said David W. Bouldin, as hereinafter set forth, did, by the said deed [93] of date May 30, 1871, relinquish and quitclaim to said John S. Watts, his heirs and assigns, all their right, title and interest in and to said Baca Float No. 3, and being the property described in said deed of May, 1864. These defendants deny that the said deed of May 30, 1871, being the deed mentioned in section 11 of the bill, inured to the benefit of the said Christopher E. Hawley and deny that it cured any defect that might have existed or did exist from the manner in which the deed to John S. Watts of May 1, 1864, was signed or executed or acknowledged, on behalf of some or any of the heirs of Luis Maria Baca, or at all; and these defendants further deny the allegations as set forth in the amendment of plaintiffs to the said section 11 of their bill, that the persons who executed,

the said deed of May 1, 1864, were all the heirs of said Luis Maria Baca and they deny that all the heirs of said Luis Maria Baca executed, or pretended to execute, said deed; and they deny that all the persons executing the deed aforesaid, of date May 30, 1871, were all the heirs of said Luis Maria Baca; but they allege that there were other heirs of said Luis Maria Baca who did not execute, or pretend to execute, the said deed.

These defendants further aver that they are informed and believe and therefore allege the fact to be that the said deed of date May 30, 1871, has not been recorded in the county of Pima, State of Arizona; defendants further aver that the deeds executed by certain of the heirs of said Luis Maria Baca to David W. Bouldin, as hereinafter set forth, were duly recorded in the county of Pima, when the said lands in dispute were situate in said county; that the said David W. Bouldin was an innocent purchaser for [94] a valuable consideration, of all of the interest conveyed to him under the said deeds aforesaid, and hereinafter set forth; that by reason thereof the said deed to said John S. Watts of date May 30, 1871, is null and void as against the prior recorded deed executed by certain heirs of said Luis Maria Baca to said David W. Bouldin, as herein-after set forth, and the said deeds to David W. Bouldin take precedence over the said deed to John S. Watts of date May 30, 1871.

12. Answering paragraph twelve (12) of said bill, these defendants deny that, by the title bond referred to in the said complaint, all or any of the

heirs of Luis Maria Baca, or of John S. Watts, held the title, if any remained in them, in view of the deeds of May 1, 1864, and May 30, 1871, and of January 8, 1870, referred to in said bill of complaint, in trust for the said Christopher E. Hawley, or his successors in title, or of the said plaintiffs, as alleged in paragraph twelve of said complaint, or at all. And these defendants, not having sufficient information to form a belief, deny that said David W. Bouldin did not in any manner or to any extent perform the agreements on his part as alleged in paragraph 12 of said complaint, or at all.

13. Answering paragraph thirteen (13) of said bill, these defendants aver that they are without knowledge, information or belief as to all or any of the matters stated in said paragraph.

14. Answering paragraph fourteen (14) of said bill, these defendants deny that at the time the said David W. Bouldin attempted to make, or did make, the mortgage mentioned and referred to in paragraph 14 of said complaint, [95] he, the said David W. Bouldin, had no other or better title than was conveyed to him by the instruments particularly described in paragraphs 12 and 13 of said complaint; but allege that the said David W. Bouldin did have other title at said time than the title which was conveyed to him by the said instruments particularly described in paragraphs 12 and 13 of said complaint.

15. Answering paragraph fifteen (15) of said bill, these defendants deny that at the time said David W. Bouldin made, or attempted to make, the

deed or instrument in the form of a deed, mentioned and referred to in said paragraph 15, the said David W. Bouldin had no other or better title than was conveyed to him by the instrument particularly described in the paragraphs marked "12" and "13" of said bill, or either thereof; but these defendants allege that David W. Bouldin had other title which was conveyed to him by other deeds than those mentioned in the said paragraphs 12 and 13.

16. Answering the paragraph sixteen (16) of said bill, these defendants admit that the agreement mentioned therein was recorded as alleged; but that they are without knowledge, information and belief as to any of the other matters stated in said paragraph.

17. Answering paragraph seventeen (17) of said bill, these defendants deny that at the time the said David W. Bouldin made the deed mentioned in paragraph 17 of the complaint herein, that the said David W. Bouldin had no other or better title to the lands sought to be conveyed than was conveyed to him by the instrument described in paragraphs 12, 13 and 16 of said complaint. [96]

18. Answering paragraph eighteen (18) of said bill, these defendants admit that the deed mentioned therein was recorded as alleged; but aver that they are without knowledge, information and belief as to any of the other matters stated in said paragraph.

19. Answering paragraph nineteen (19) of said bill, these defendants aver that they are without any knowledge, information and belief as to any and all of the matters stated in said paragraph.

20. Answering paragraph twenty (20) of said bill, these defendants aver that they are without any knowledge, information and belief as to any and all of the matters stated in said paragraph.

21. Answering paragraph twenty-one (21) of said bill, these defendants aver that the instrument in the form of a deed which, in paragraph 21 of said complaint, plaintiffs allege was, on or about February 21, 1885, executed by the said David W. Bouldin, was, in fact a deed, and that the same was duly executed and was duly recorded, and that the same was a good deed of conveyance and did convey to the said grantees therein named, to wit: To John Ireland and Wilbur H. King, all of the right, title and interest and all the property which it did purport to convey; and these defendants deny that at that time, the said David W. Bouldin had no right or title or interest in or to any part of said land. Defendants deny that prior to May 2, 1895, or at any other time, the said David W. Bouldin and John Ireland and Wilbur H. King, or any of them, agreed to rescind the transaction in which said deed was given; and not having sufficient information to form a belief, these defendants deny that David W. Bouldin gave the said John Ireland and Wilbur H. King, or either of them, his note for [97] the money which had been paid by the said Ireland and King and that the said Ireland and King gave the said Bouldin a bond to reconvey said land to him. These defendants admit that a judgment was obtained by said Ireland and Kings, or one of them, against Leo Goldschmidt, as administrator of the estate of the said David W.

Bouldin, deceased, on or about May 2, 1895, said judgment being rendered and entered by the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, and that an execution or order of sale was issued under said judgment and that the sheriff of said Pima County sold and conveyed to said Wilbur H. King all the right, title and interest which said David W. Bouldin, or his estate had in and to the lands described in paragraph 2 of the complaint herein on July 31, 1895; but they deny that said interest was nothing. These defendants admit that on or about April 8, 1907, the widow of John Ireland did execute a deed conveying to defendant Joseph E. Wise, all of her right, title and interest in and to said Baca Float No. 3, and that on or about April 24, 1907, the said Wilbur H. King did execute to defendant Joseph E. Wise, his deed wherein he did convey to the defendant, all his right, title and interest in and to said Baca Float No. 3, as described in paragraph 2 of the complaint. But defendants deny that for the reasons stated in the said complaint of plaintiffs, and deny that for any reasons whatsoever, the said deeds just mentioned, or either of them, conveyed no little to any portion of said land, or conveyed no interest therein to said defendant Joseph E. Wise.

22. Answering paragraph twenty-two (22) of said bill these defendants aver that they are without any knowledge, [98] information and belief as to any and all of the matters stated in said paragraph.

23. Answering paragraph twenty-three (23) of

said bill, these defendants admit the recording of the deed as therein alleged; but aver that they are without any knowledge, information and belief as to any of the other matters stated in said paragraph.

23a. They admit the allegations of paragraph twenty-three-a, (23a) of said bill.

24. Answering paragraph twenty-four (24) of said bill, these defendants deny that prior to August 3, 1899, or ever or at all, the said Alex F. Mathews and S. A. M. Syme, by mesne conveyance, had become the owners of the land conveyed by John S. Watts to Christopher E. Hawley by the deed marked exhibit "A." These defendants admit that the deeds which appear of record, as alleged in said paragraph 24, do appear of record, and these defendants aver that they are without knowledge, information or belief as to all or any of the other allegations set forth in said paragraph 24 of said Bill as amended.

25. Answering paragraph twenty-five (25) of said bill, these defendants aver that they are without knowledge, information and belief as to all or any of the matters stated therein.

26. Answering paragraph twenty-six (26) of said bill, these defendants admit that on or about February 8, 1907, the said Samuel A. M. Syme, and certain persons claiming to be the heirs, devisees and legal representatives of Alex F. Mathews, executed to the plaintiffs as trustees for the grantors, or as the attorneys in fact for the grantors, a certain instrument in writing which was thereafter [99] recorded in Santa Cruz County, Arizona, in book 7

of Real Estate, at page 546, but these defendants are without knowledge, information or belief as to whether or not said persons, were, in fact, the heirs, devisees and legal representatives of said Alex F. Mathews and they deny that said instrument was, in fact, a deed, or conveyed any estate in any property to the plaintiffs or either of them, and these defendants further deny that since February 8, 1907, or at any time, the plaintiffs or either of them, have been or are now, the owners of said Baca Float No. 3, located on June 17, 1863, or any part thereof.

27. Further answering said complaint these defendants allege that on or about the 14th day of January, 1878, the following persons, to wit: Rafael Parado, Dolores Baca de Parado, Jesus M. Baca, Miguel Baca, Nepomuceno Baca, Apolonia Baca de Adamson, Jacinto Barreyesa, Palencio Baca, Francisco Baca, Maria Estapana Gorduna, Jesus Maria Baca, Ines Baca, Nepomuceno Baca, Manuel Baca and Juan Baca, being heirs and descendants of heirs of said Luis Maria Baca, did, by deeds duly executed, acknowledged and thereafter and on the 25th day of March, 1885, duly recorded in the said county of Pima, State of Arizona, convey unto said David W. Bouldin, an undivided two-thirds of all their right, title and interest in and to said Baca Float No. 3, as described in said first and valid description thereof, and that under and by virtue of said deeds the said David W. Bouldin became the owner of a very large interest in and to said Baca Float No. 3.

28. That the said John S. Watts to whom was executed and delivered by the heirs of Luis Maria

Baca, the various deeds alleged in the complaint and herein mentioned and referred [100] to, died on or about June 11, 1876, leaving surviving him, his wife, Elizabeth A. Watts, and five children, to wit: John Watts, a son, J. Howe Watts, a son, Mary A. Watts, a daughter, who subsequently married W. V. B. Wardwell, Louise Watts, a daughter, who subsequently married Atwater Wardwell and Frances A. Watts, a daughter, who subsequently married A. L. Bancroft; that at the time of the death of the said John S. Watts, he was the owner of all of the interest theretofore acquired by him in and to the said Baca Float No. 3, as described in paragraph 2 of said complaint, he never having conveyed the same; that thereafter and on or about the 20th day of September, 1884, the said widow and heirs aforesaid, of the said John S. Watts, being then the owners of all the interest which the said John S. Watts had theretofore owned in the said Baca Float No. 3, aforesaid, and being the interest acquired by said John S. Watts in his lifetime, under the deeds executed by certain heirs of the said Louise Maria Baca, as aforesaid, did, for a valuable consideration, execute and deliver to one David W. Bouldin their deed, dated on said day, wherein and whereby they did grant, sell and convey unto said David W. Bouldin, an undivided two-thirds interest in and to said lands and premises aforesaid, describing the same with the specific boundaries of said valid location, and as described in paragraph 2 of said complaint; that said deed was signed and delivered in the presence of two witnesses and thereafter and on the 29th day of

March, 1885, the same was recorded in the office of the county recorder of said Pima County, in the then Territory of Arizona, in book 13 of Deeds of Real Estate at pages 13 et seq. thereof; that thereafter and on the 14th day of April, [101] 1888, the execution of said deed was duly acknowledged before Frank P. Clark, clerk of the County Court of El Paso County, State of Texas, being a court of record having a seal, and thereafter on the 18th day of April, 1888, the said deed was again recorded in the office of the said county recorder of said Pima County, in book 14, of Deeds of Real Estate, at pages 597 et seq thereof.

And these defendants further aver that the deed which plaintiffs allege in their complaint was executed by the said John S. Watts to Christopher E. Hawley, on or about the 8th day of January, 1870, was not recorded in the said county of Pima, or in any other county in the Territory of Arizona, until the 9th day of May, 1885, being nearly seven months after the heirs of said John S. Watts had executed and delivered their deed aforesaid to said David W. Bouldin; and these defendants aver upon information and belief that the said David W. Bouldin was an innocent purchaser for a valuable consideration without notice of the said deed from the said John S. Watts to said Christopher E. Hawley, and therefore, in any event, the said deed is invalid and of no force or effect as against the right, title and interest which said David W. Bouldin acquired under and by virtue of his deed aforesaid, of date September 30, 1884.

29. That thereafter and on or about the 21st day of February, 1885, the said David W. Bouldin did, by deed dated on said day, convey to John Ireland and Wilbur H. King, an undivided 1/9 of his, said Bouldin's interest, in and to said Baca Float No. 3, describing the same according to the said first and valid location thereof, which deed was duly acknowledged, delivered and was thereafter and on the 19th day of June, 1885, recorded in the office of the said county recorder of said Pima County, in book 13, Deeds of Real Estate, page 140. [102]

30. That by reason of the aforementioned conveyance from David W. Bouldin to John Ireland and Wilbur H. King, the said John Ireland did become the owner of and entitled to an undivided 1/18 of all of the said David W. Bouldin's right, title and interest in and to the said Baca Float No. 3; the said interest of Bouldin's being at that time, an undivided  $\frac{2}{3}$  interest in and to all of the said Baca Float No. 3; that the said property was acquired by the said John Ireland as community property.

31. That thereafter, the said John Ireland died intestate, leaving surviving him as his devisees and heirs, Mrs. M. I. Carpenter, a daughter, Pat C. Ireland, a grandson and son by adoption, Ireland Graves, a grandson by deceased daughter, Anna R. Wilcox and Eldridge I. Hart, grandchildren by a deceased daughter. That as such devisees and heirs of John Ireland, these defendants are the owners of and entitled to an undivided  $\frac{1}{4}$  of 1/9 of  $\frac{2}{3}$  of the said Baca Float No. 3.

WHEREFORE these defendants and interveners pray that they may have judgment against the said

plaintiffs and each of them and all other parties to this action.

1. That the defendants, M. I. Carpenter, Pat C. Ireland, Ireland Graves, Anna R. Wilcox and Eldridge I. Hurt, be decreed to be the owners of an undivided  $\frac{1}{4}$  of  $\frac{1}{9}$  of  $\frac{2}{3}$  interest in and to the said Baca Float No. 3, as described in paragraph 2 of said plaintiff's bill of complaint.

2. That they be decreed to own the said interest in the following proportions: M. I. Carpenter, an undivided one-fourth; Pat C. Ireland, an undivided one-fourth; Ireland Graves, an undivided one-fourth and Anna R. Wilcox and Eldridge I. Hurt, each an undivided one-eighth. [103]

3. That these defendants and interveners have such other, further and general relief as the circumstances of the case require and as may be meet and equitable and that they have their costs.

JOHN D. MACKAY,

Attorney and Solicitor for M. I. Carpenter, Pat C. Ireland, Ireland Graves, Anna R. Wilcox and Eldridge I. Hurt, Defendants and Intervenors.

Verified March 25, 1915.

**Stipulation to Use Parts of Record in Case in  
Washington, D. C.**

(Filed February 17, 1915.)

**IT IS HEREBY STIPULATED THAT:**

1. Any party herein may treat as properly exemplified and authenticated and in proper form for admission in evidence herein, with the same force and effect as if duly exemplified and authenticated under the laws of the United States relating thereto,

any instrument purporting to be (a) a map or any copy thereof; (b) or any communication, letter, report or decision by any officer or official of the United States; (c) or any petition, letter or communication to any officer, official or department of the United States appearing in the transcript of record in the case of Franklin K. Lane, et al., appellants, against Cornelius C. Watts, et al., No. 2584 October term, 1913, in the Court of Appeals of the District of Columbia, or in the transcript of record in the same case, No. 889, October Term, 1913, in the Supreme Court of the United States, as having been offered in evidence in said case.

2. Subject to any proper objection as to relevancy, materiality or competency in other respects, any such paper appearing in either of said printed transcripts of record may be offered in evidence herein on production of [104] a copy of such paper vouched by the solicitor for the party offering it, to be a correct copy of the paper appearing in either of said printed transcripts.

3. The authenticity of any printed copy of said transcripts of record may be shown or proved by the signature or testimony of any of the solicitors or counsel herein.

**Stipulation that Answers be Treated as Cross-bills.**

(Filed January 8, 1915.)

IT IS HEREBY MUTUALLY STIPULATED, that the pleadings by way of answer of each and every defendant herein, heretofore or hereafter duly served upon the solicitors for the plaintiffs, or upon the solicitors for the defendants affected thereby,

shall be taken, not only as a pleading by way of answer, but also as a cross-bill, duly filed, served, controverted and at issue, asking affirmative relief [105] against the plaintiffs and against each and every other defendant in the action.

It is stipulated by the several parties to this proceeding that each and every paper was duly served by each of said parties upon each of the other parties or upon the solicitor or solicitors of such other parties.

It is further stipulated by the several parties to this proceeding that the paragraph numbers in the several pleadings amended by the pleadings herein-before printed, have been preserved in the amended pleadings. [106]

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*In the District Court of the United States for the  
District of Arizona.*

CORNELIUS C. WATTS and DABNEY C. T.  
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY  
et al.,

Defendants.

**Petition for Temporary Injunction.**

To the Honorable, the Judge of the District Court of  
the United States, in and for the District of  
Arizona;

Your petitioner, Dabney C. T. Davis, Jr., respectfully shows that he is one of the plaintiffs named in the above-entitled suit:

That the bill of complaint in said suit was filed in the clerk's office of this court on the 23d day of June, 1914, and that a subpoena was issued out of and under the seal of this court on the 24th day of June, 1914, addressed to the several defendants above named, including the defendants Joseph E. Wise and Lucia J. Wise;

That the said suit is brought to quiet the title to the land situated in Santa Cruz County, State of Arizona, known as Baca Float No. 3, and which is particularly described in the bill of complaint in this suit, to which for such particular description, reference is hereby made.

That the said Joseph E. Wise, and upon information and belief, his nephew, George Wise, the son of the defendant Margaret W. Wise acting as their agent and representative, have threatened to build a fence around the said Float, and to enclose the same with said fence; that said defendants Wise have actually commenced the erection and construction of said fence and are unlawfully attempting to enclose said lands or a large portion thereof, with said fence, and [107] are unlawfully attempting to enclose the said lands or a large portion thereof, with said fence, and unlawfully attempting to deprive the plaintiffs of the possession of said lands or a large portion thereof; and that said acts on the part of the defendants Wise are without any authority of the plaintiffs and against plaintiffs' will and without their consent; that the defendants Wise will, unless restrained by the order of this Court, continue to build and construct such fence until such

fence is completed entirely around said lands, or a large portion thereof, and that the building of said fence by defendants Wise, and the enclosing of said lands and premises by said fence will change the existing condition of the property involved in this suit to the prejudice and disadvantage of the plaintiffs, and prevent the plaintiffs from securing the full benefit of the decision of this Court should the same be in their favor, and disturb the *status quo* existing at the time of the institution of this suit and now existing.

That unless the said defendants Wise are restrained by order of this Court from the commission of the acts herein complained of, they will continue to erect and construct the said fence and will thus change the *status quo* existing at the institution of this suit and now existing to the great wrong and injustice of the plaintiffs and to the prejudice of the plaintiffs in this suit and contrary to and in violation of the rights of the plaintiffs.

That the plaintiffs have no plain, speedy and adequate remedy or any remedy at law, and are remedyless, except by order of this Court, and that an order to show cause why the defendants Wise their agent, attorneys and representatives, should not be restrained from continuing or completing the building of said fence, or otherwise changing the *status quo* of said property, be granted plaintiffs, returnable on Monday, the 29th day of June, 1914, at 10 o'clock in the forenoon of said day or as soon thereafter as counsel may be heard.

DABNEY C. T. DAVIS, Jr. [108]

State of Arizona,  
County of Pima,—ss.

Dabney C. T. Davis, Jr., being first duly sworn, deposes and says that he is one of the plaintiffs in the above-entitled action; that he has read the foregoing petition, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters he believes the same to be true.

D. C. T. DAVIS, Jr.

Subscribed and sworn to before me this 24th day of June, 1914.

[Notarial Seal]

RENA NORTON,  
Notary Public.

My commission expires February 7, 1914.

Filed June 26, 1914. [109]

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*In the District Court of the United States in and for  
the District of Arizona.*

CORNELIUS C. WATTS and DABNEY C. T. DAVIS, JR.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,  
et al.,

Defendants.

**Order [to Show Cause].**

On reading and filing the verified petition of Dabney C. T. Davis, Jr., hereto attached and the bill of

complaint filed in the above-entitled suit;

IT IS ORDERED That the defendant Joseph E. Wise and that George Wise, the son and representative of the defendants Margaret W. Wise and Jesse H. Wise, show cause before me at the court-room of the United States District Court, in the city of Tucson, county of Pima, State of Arizona, on Monday, June 29th, A. D., 1914, at the hour of 10 o'clock in the forenoon of said day, or as soon thereafter as counsel may be heard, why an order should not be issued restraining them and each of them, their, and each of their agents, attorneys and representatives, from interfering in any manner with the *status quo* of the property described in the complaint herein as the 1863 location of Baca Float No. 3, and particularly from continuing or completing the building of fences in or around said Float, or any portion thereof, pending further order of this Court.

Dated at Tucson, Pima County, Arizona, this 24th day of June, 1914.

WM. H. SAWTELLE,  
Judge of the United States District Court. [110]

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*In the District Court of the United States in and for  
the District of Arizona.*

CORNELIUS C. WATTS and DABNEY C. T.  
DAVIS, JR.,

Plaintiffs,  
vs.

SANTA CRUZ DEVELOPMENT COMPANY,  
et al.,

Defendants.

**Affidavit and Reply of Joseph E. Wise to Petition  
for Writ of Injunction.**

To the Honorable the Judge of the District Court  
of the United States, in and for the District of  
Arizona.

Now comes Joseph E. Wise, one of the defendants  
herein, and for answer to the petition filed herein  
by plaintiffs, or on their behalf, for a writ of in-  
junction herein, and in answer to the order of the  
Honorable Judge of this court of date the 24th  
day of June, 1914, to show cause why an order  
should not be issued restraining this defendant,  
Joseph E. Wise and George Wise from interfering  
in any manner with the *status quo* of the property  
described in the complaint herein, as the 1863 loca-  
tion, or Baca Float No. 3, and particularly from  
continuing or completing the building of fences in  
or around said Float, or any portion thereof,  
pending the further order of this Court, respect-  
fully shows and alleges that he is the owner of a  
large undivided interest in and to said Baca Float  
No. 3 and has been the owner of such interest for  
many years last past; that he is advised and believes  
that his interest is in excess of an undivided one-  
tenth interest; that the plaintiffs in this case are  
not the sole owners of the said Baca Float No. 3,  
that all of the interest of the heirs of Luis Maria  
Baca in said Baca Float No. 3, was not conveyed  
to John S. Watts, as alleged in the bill of complaint  
[111] of plaintiffs herein; that the said alleged  
deed did not convey to the said John S. Watts all

of the interest of said heirs, but, if the same conveyed anything, only conveyed, as this defendant is informed and believes, the interest of a very small number of said heirs in said Baca Float No. 3:

This defendant further alleges that he became the owner of an interest in said Baca Float No. 3 in the year 1907, that thereafter and in September, 1913, he did acquire other and additional interests in said Baca Float No. 3, from some of the heirs and descendants of said Luis Maria Baca; that in the year 1907 and ever since, this defendant has been in the business of raising cattle, and has, as one of the co-owners of said Baca Float No. 3, grazed his cattle upon said Float, and still is doing so; that, for the purpose of so grazing his cattle, he has erected at a large expense, a number of fences upon said Float; and has also erected a number of fences so as to keep the cattle of persons who have no interest in said Float from off said grant; but this defendant denies that he, or his nephew George Wise, either as agent for Margaret W. Wise and Jesse H. Wise, or as their representative, or at all, have threatened to build a fence around the said Float, or to enclose the same with said fence, and this defendant denies that he has had any such intention or that he has erected any fences for any other purpose, than for the purpose of protecting his cattle, in grazing upon said lands, and for keeping the cattle of others who have no right to graze upon said Float from off the same, and said fence does not enclose all of said Float. This defendant denies that he is attempting to deprive the plain-

tiffs of the possession of said Float, except that certain tract occupied by defendant as his home-stead, which he claims under a different title.

This defendant does not know whether or not his acts are against the will or without the consent of plaintiffs, for the reason that until the filing of this bill of complaint, or less [112] than thirty days before the filing of the same, the said plaintiffs never expressed any objection to this defendant building fences on said Float for the purposes aforesaid, or for any purpose, or at all. This defendant further states that he will not and does not intend to build or construct a fence completely around said lands, and that he only intends to fence up sufficient thereof so that he can enjoy the use of said lands for grazing purposes; that he is willing that the plaintiffs pending this action, should have a like possession of all of said grazing lands, and lands enclosed within said fence, so used by him for grazing purposes, with this defendant.

Defendant further states that prior to the bringing of this action, he constructed over 30 miles of fencing on said grant for the purposes aforesaid, and that said fence increased the value of the said property for the reason that a large part thereof, and particularly that part so fenced, is only valuable for grazing purposes, and cannot be used to advantage without the same be fenced. This defendant denies that the enclosing of such parts of said land and premises by a fence will change the existing condition of the property involved in this suit, to the prejudice or disadvantage of plaintiffs, or at

all, and denies that it will be in violation of the rights of the plaintiffs, and further denies that it will prevent the plaintiffs from securing the full benefit of the decision of the Court, should it be in their favor, and denies it will disturb the *status quo* existing at the time of the institution of this suit, or now existing; and in this behalf defendant avers that this is a suit to quiet title, and is not a suit for possession; that the fences which this defendant has erected or may erect upon said lands cannot in any way affect any of the issues in this case; or the property involved; that this defendant does not claim any right to said Baca Float No. 3 by virtue of the statute of limitations, except a part thereof of which he had been in possession not exceeding 1040 acres, for more than ten years prior to his purchasing an interest [113] in the said Baca Float No. 3, from said heirs and which lands he still is in possession of, living thereon with his family as his homestead and homeplace, and which portion of lands he has attempted to fence, and does not intend to fence any more than the same has been fenced for many years last past; but this defendant herewith consents that said plaintiffs and all the other reputed co-owners of said Baca Float No. 3, shall during the pendency of this action, have the right to the possession, equally with this defendant, of all of said Baca Float No. 3, except however, the said homestead and homeplace of this defendant, the title to which he claims by virtue of the statute of limitations, as aforesaid, prior to his, being an owner of said grant, and

which homeplace and lands he is now living upon and has been for more than ten years and in regard to which place, he is not erecting or attempting to erect any more fences.

Defendant further states, that the said Baca Float No. 3, is a tract of land twelve miles square; that upon said tract of land are a great many settlers who have no interest whatsoever in and to said Baca Float, except by virtue of adverse possession, if any; that said settlers have no interest whatsoever and claim no interest in the larger part of said Baca Float No. 3, and upon the part thereof where this defendant is grazing his cattle, and has erected fences for the grazing of the same, as aforesaid, and that it is necessary that said fences be kept intact and that the *case* be rebuilt where they have been torn down, so as to keep the cattle of said settlers who have no interest in said part of said grant from trespassing thereon.

Defendant further states that the said George Wise has no interest whatsoever in said grant; that the defendant, Jesse H. Wise has an undivided interest in said grant, and claims an undivided interest therein, under and by virtue of certain deed or deeds from the heirs and descendants of heirs of said Luis Maria Baca; [114] that neither said defendants Jesse H. or Margaret W. Wise, either have fenced or threatened to fence any of said Float, and he further avers that whatever the said George Wise is doing in the matter of fencing said Float the said George Wise is doing as an agent and em-

ployee and representative of this defendant and not otherwise.

WHEREFORE, this defendant prays that said petition for writ of injunction be denied.

JOSEPH E. WISE.

SELIM M. FRANKLIN,

Attorney for J. E. Wise.

State of Arizona,

County of Pima,—ss.

Joseph E. Wise, being first duly sworn deposes and says, that he is one of the defendants in the above-entitled case, that he has read the foregoing reply and answer to petition and order for injunction, and knows the contents thereof. That the facts therein stated are true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes the same to be true. And that the facts therein denied are not true to the best of his information and belief.

JOSEPH E. WISE.

Subscribed and sworn to before me this 29th day of June, 1914.

W. FRED KAIN,

Notary Public.

Filed June 30, 1914. [115]

*In the District Court of the United States in and for  
the District of Arizona.*

CORNELIUS C. WATTS et al.,

Plaintiffs.

vs.

SANTA CRUZ DEVELOPMENT COMPANY,  
et al.,

Defendants.

**Supplemental Affidavit and Reply of Joseph E.  
Wise, to Petition for Writ of Injunction.**To the Honorable the Judge of the District Court  
of the United States, in and for the District of  
Arizona;

Comes now Joseph E. Wise, one of the defendants herein, and for supplement or amendment to his answer to the petition for an injunction herein, respectfully shows and alleges; that since the filing of his reply and answer to said petition, to wit, upon the hearing before your Honor, this defendant ascertained from the testimony of George W. Atkinson, that said Atkinson claimed a lease or license to use all of said Baca Float No. 3, for grazing purposes under a certain lease which he testified had been executed to him by plaintiffs and that said lease permitted him, the said Atkinson, not only to graze his own cattle upon said grant, but permitted him to sublet said right to any and all persons whatsoever, except these defendants; that this defendant has further been advised since the said hearing, that said alleged lease from plaintiffs to Atkinson contains

a provision that the same can be terminated at the pleasure of either party at any time during the term thereof upon such party giving the other party sixty days' notice of his desire to terminate the same; that it becomes apparent that said lease was only made for the purpose of harassing and annoying this defendant, and therefore, this defendant now states that he is not willing that the plaintiffs in this action, or either of them, should have, pending this action, possession of all or any of the grazing lands on the said Baca Float No. 3, [116] of any of said lands, and is not willing that they, or either of them, should have any possession whatsoever of any part of said Baca Float No. 3 for grazing purposes, or any other purpose whatsoever; and this defendant herewith withdraws his consent that said plaintiffs or any other reputed co-owner of said Baca Float No. 3, shall, during the pendency of this action, have the right to the possession equally with this defendant, or at all, to any part of said Baca Float No. 3, except the owners of the undivided  $\frac{1}{3}$  interest in said Baca Float who claim under the heirs of John S. Watts, deceased; and as these plaintiffs do not claim under the said heirs of said John S. Watts, this exception does not apply to plaintiffs or either of them.

This defendant further respectfully represents that the statement set forth in lines 2 to 12 of page four of his said answer and reply to said petition do not correctly express what this defendant intended to say in this, that this defendant intended to allege and set forth in said answer that he did

not claim any right to said Baca Float No. 3 by virtue of adverse possession only, that is by possession only, except the 1040 acres mentioned in said answer and reply, to which he does claim full title by virtue of adverse possession only, as set forth more fully in his answer to the complaint herein; but this defendant intended to say in said reply that he did claim his undivided interest in said grant, which interest comes directly from the heretofore owners of said grant, adversely to all other claimants of said interest, and he does claim that having been in possession of his said undivided interest under recorded deeds conveying the same to him, for more than seven years, that any action wherein his right to his said undivided interest is questioned is barred by the statute of limitations; and he asks the Court to consider that his said answer and reply to said petition is amended so as to set forth this status of claim on his part, all of which is more fully set forth in his answer to the bill of complaint of plaintiffs, which answer is now filed herein.

JOSEPH E. WISE,  
SELIM M. FRANKLIN,  
Attorney for Joseph E. Wise. [117]

State of Arizona,  
County of Pima,—ss.

Joseph E. Wise, being first duly sworn, says that he is one of the defendants in the above-entitled action; that he has read the foregoing supplement and amendment to his answer and reply to petition for injunction herein, and knows the contents thereof. That the facts therein stated are true of his own

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knowledge, except as to the matters stated upon information and belief, and as to those matters he believes the same to be true.

JOSEPH E. WISE.

Subscribed and sworn to before me this 9 day of July, 1914.

My commission expires Nov. 20, 1916.

W. FRED KAIN,  
Notary Public.

Filed July 9, 1914. [118]

At a term of the United States District Court for the District of Arizona, held in the courtroom at the city of Tucson, Arizona, the 20th day of July, 1914. Present: Hon WILLIAM H. Sawtelle, Judge.

In Equity—E-5.

(TUCSON.)

CORNELIUS C. WATTS et al.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY  
et al.,

Defendants.

### **Order for Injunction.**

The order to show cause heretofore granted herein, directed to the defendant Joseph E. Wise and to George Wise, as agent of the defendants Jesse H. Wise and Margaret W. Wise, commanding them to appear and show cause, if any they have, why an order should not be made enjoining them from changing the *status quo* existing at the time of said

order to show cause, on Baca Float No. 3, and from erecting or maintaining fences enclosing portions of said Float pending the decision of this suit, coming on to be heard, and after duly considering the evidence presented on both sides, and after hearing Samuel L. Kingan and Hartwell P. Heath, of counsel for plaintiffs, and Selim M. Franklin, solicitor for defendant Joseph E. Wise, and due consideration being had,

Upon the motion of Samuel L. Kingan, solicitor for plaintiffs,

IT IS ORDERED, upon the plaintiffs executing a bond to the defendant Joseph E. Wise in the sum of Five Thousand Dollars (\$5,000), conditioned that plaintiffs will pay to said defendant such costs and damages as may be incurred or suffered by said defendant, should it be adjudged and found that said defendant was wrongfully enjoined or restrained, that said Joseph E. Wise be, and hereby is, his attorneys, agents, employees and representatives during the pendency of this suit, enjoined from erecting or re-erecting fences in, upon or around Baca Float No. 3, or any portion thereof, which would prevent or obstruct the said plaintiffs, or [119] their tenants from enjoining the use of said Float for grazing purposes, or which would prevent or obstruct free ingress or egress of cattle of said plaintiffs, or their tenents, to and from the water or drinking places upon said Float, or prevent or obstruct the use of said water and land, as heretofore used. And especially is the said Wise enjoined from erecting what is known as the Garden and Coyentana fences

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and if so it be that said defendant has already rebuilt said last-mentioned fences since June 25, 1914, he is hereby enjoined and commanded to take away or remove such fences, or a sufficient portion or portions thereof so as to not prevent or obstruct the free access of cattle to their customary watering and grazing places. Provided, that this injunction shall not extend to the land occupied by the said Joseph E. Wise, at Calabasas, as a homestead.

Dated this 20th day of July, 1914.

WM. H. SAWTELLE,

Judge.

Filed July 20, 1914. [120]

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*In the District Court of the United States in and for  
the District of Arizona.*

CORNELIUS C. WATTS and DABNEY C. T.  
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,  
JOSEPH E. WISE et al.,

Defendants.

**Motion and Petition for Modification of Injunction.**  
To the Honorable, the Judge of the District Court of  
the United States, in and for the District of  
Arizona.

Now comes Joseph E. Wise, a defendant in the above-entitled suit, and respectfully shows: That heretofore, and on the 24th day of June, 1914, said plaintiffs filed a petition herein, wherein they did

pray that an order to show cause be issued against this defendant and to show cause why he should not be restrained from continuing or completing the building of a certain fence therein mentioned, or otherwise changing the *status quo* of the property in dispute in this action; that in said petition, the plaintiffs did allege that this defendant and others have threatened to build a fence around the said Float (Baca Float No. 3) "and to enclose the same with said fence; that said defendants Wise have actually commenced the erection and construction of said fence and are unlawfully attempting to enclose the said lands, or a large portion thereof, with said fence, and unlawfully attempting to deprive the plaintiffs of the posession of said lands, or a large portion thereof; and that said acts on the part of said defendants Wise are without any authority of the plaintiffs, and against plaintiffs' will and without their consent; that the defendants Wise will, unless restrained by the order of this court, continue to build and construct such fence until such fence is completed entirely around said lands, or a large portion thereof, and that the building of said fence will change the existing condition of said property involved in this suit, to the prejudice and disadvantage of the plaintiffs, and prevent the plaintiffs from securing the full benefit [121] of the decision of this Court, should the same be in their favor, and disturb the *status quo* existing at the time of the institution of this suit, and now existing. That

unless the defendants Wise are restrained by order of this Court from the commission of the acts herein complained of, they will continue to erect and construct the said fence and will thus change the *status quo* existing at the institution of this suit, and now existing, to the great wrong and injustice of the plaintiffs, etc."

and plaintiffs did then pray: "and that an order to show cause why the defendants Wise, their agents, attorneys and representatives, should not be restrained from continuing or completing the building of said fence, or otherwise changing the *status quo* of said property, etc."

That this Honorable Court did, on the said 24th day of June, issue its order, directed to this defendant, and to one George Wise, requiring them and each of them, their, and each of their agents, attorneys and representatives, from interfering in any manner with the *status quo* of the property described in the complaint herein, as the 1863 location of Baca Float No. 3, and particularly from continuing or completing the building of fences in or around said Float, or any portion thereof, pending further order of this Court.

That thereafter and on the 29th day of June, 1914, this defendant did appear before this Honorable Court, in response to said order, and the said matter was heard by the Court on said day; but by reason of the fact that this defendant had not yet had time to prepare his answer to the complaint of plaintiffs, and by reason of the fact that the Hon. Judge of this court was required to leave the city of Tucson on

the afternoon of said day, this defendant did not have time or opportunity to present to the Court at said hearing, the evidence necessary for a full consideration of said petition; and particularly did not have opportunity to present a map, showing what fences he had theretofore built within the limits of the said Baca Float No. 3, and showing the watering places on said grant, and present a full defense to said application. [122]

That upon said hearing, it was agreed to submit said matter upon briefs, and this defendant agreed to file his answer, as soon as he possibly could.

That within a short time thereafter, this defendant did file his verified answer to the complaint of plaintiffs; but the said answer only touched upon the question of title to the said Baca Float No. 3, and did not present any facts whatsoever in regard to fences or watering places or trails, for the reason that the present suit is an action to quiet title, and therefore none of the facts in regard to fences or watering-places or trails etc., are matters in dispute in the main action in regard to which pleadings could be predicated. Therefore, the said answer, so filed by this defendant, did not contain and could not contain any of the facts in regard to fences which this defendant had built and maintained within the limits of said grant prior to the filing of said petition, and particularly fences which enclosed his pastures which had been built prior to the filing of said petition; and defendant has had no opportunity to present to this court the facts relative to the fences and enclosures which he had built upon said lands

and had maintained upon said lands prior to the commencement of this action, and this Hon. Court was not and is not advised as to said facts.

That thereafter, and on the 20th day of July, 1914, this Hon. Court did grant an injunction, which, by its terms enjoins and restrains this defendant from doing matters and things which were not petitioned or prayed for in the said petition for an injunction of plaintiffs, and in regard to which the order of this Hon. Court did not require this defendant to present any testimony at the time of said hearing; that by said order this defendant is enjoined

from erecting or re-erecting fences in, upon or around Baca Float No. 3, or any portion thereof, which would prevent or obstruct the said plaintiffs, or their tenants, from enjoying the use of said Float for grazing purposes, or which would prevent or obstruct free ingress or [123] egress to cattle of said plaintiffs or their tenants, to and from the water or drinking-places upon said Float, or prevent or obstruct the use of said land and water, as heretofore used. And especially is the said Wise enjoined from erecting what is known as the Garden and Coyentana fences and if so it be that the said defendant has already built said last-mentioned fences since June 25, 1914, he is enjoined and commanded to take away or remove said fences, or a sufficient portion or portions thereof, so as not to prevent or obstruct the free access of cattle to their customary watering and grazing places."

That said injunction goes beyond said petition for an injunction filed by plaintiffs, and beyond the order of this Court to show cause, and is indefinite and uncertain to such an extent that this defendant, who is desirous of carefully observing the orders and injunctions of this Court, does not and cannot know the scope and extent thereof; and said injunction goes further and in effect deprives this defendant of the right to use certain pasturage which he has enclosed within the limits of said grant, and were enclosed a long time before the filing of said petition.

To make the said matter clear to this Honorable Court as to the effect and scope of said injunction, defendant appends hereto a sketch map of said Baca Float No. 3, which shows the pastures he enclosed and the fences which he had erected on said grant, prior to the filing of said petition, some of which fences have been unlawfully and surreptitiously cut from time to time by parties unknown to defendant, as hereinafter set forth.

In the year 1891, or thereabouts, this defendant erected within the limits of said Baca Float No. 3 a fence enclosing three sides of the pasture, containing 800 acres, known as the Hacienda Field, as shown by the pasture marked "Hacienda Field," on the plat of Baca Float hereto annexed; said fence has remained ever since and has been used by this defendant as a pasture and the maintenance of said fence does not in any way affect the *status quo* of said property, as the same existed on June 24, 1914, when this suit was commenced.

In May, 1911, and thereafter, and in February, 1912, [124] being more than two years before this suit was commenced, this defendant claiming to be an owner of an undivided interest in said Baca Float, did enclose another pasture, containing 5,000 acres of land, which is commonly known as the San Caytano pasture or fence, and perhaps is referred to in the order of injunction as the Coyentano fence. This San Caytano pasture is marked "Fence No. 2" on the plat. Within the limits of this pasture this defendant has a ranch-house and smaller pastures, and has had the same for more than two years prior to the commencement of this suit, using the same in his cattle business.

On many occasions since the erection of this fence, it has been surreptitiously and unlawfully cut in places, by parties unknown to this defendant, and in violation of law, but defendant has always replaced the wires so cut, so as to again use said fence; that shortly before the bringing of this suit a part of this fence was again cut by unknown parties and before this defendant could repair the same the present suit was filed and the petition for injunction filed; said fence had only been cut a few days before the filing of said petition, and therefore defendant had not completed repairing said fence, so cut at the time said petition was filed; nevertheless, the present injunction of this Court restrains this defendant from repairing said fence, or at least said construction might be placed upon the said injunction, and this defendant, not wishing in any way, to disobey said injunction, asks that said injunction

be modified so that he can repair said fence.

In February, 1913, this defendant did fence up another pasture upon said grant, claiming that he had the right to do the same, as owner of an interest therein, said fence enclosing 1400 acres of land, and is marked "Fence No. 3," on said plat of Baca Float No. 3, annexed hereto; and this pasture or enclosure is perhaps referred to in said injunction as the Garden Fences. The fence enclosing this pasture has been unlawfully cut by parties [125] unknown to defendant and against the law at divers and sundry times, since defendant erected the same, but this defendant has each time repaired the fence so cut, so as to maintain said pasture; a portion of this fence was also cut a short time prior to the filing of the petition herein for an injunction, and although this defendant had erected said enclosure and fence and had been using the same for more than a year before the filing of said petition and the bringing of this suit, nevertheless, the said injunction aforesaid, restrains this defendant from repairing said fence and said pasture.

This defendant, for many years has been and still is engaged in grazing cattle on the ranch, and all of said pastures are necessary for him to use in his business; but the injunction of this court restrains him from using the same, to his great loss and damage.

Defendant further represents that in 1913, he did erect another fence, from the northwest corner of the pasture marked "Pasture No. 2," on said plat, and running thence northerly to the fence of certain

homesteaders; this fence is known as the San Bah-tano fence, and perhaps is referred to as the Coy-entano fence in said writ of injunction. Said fence has also been cut and the injunction of this Honorable Court prevents defendant from repairing the same.

Defendant did also in the year 1912, erect a fence along a portion of the boundary line of said grant, as marked on the plat "Wise Fence," and has maintained the same ever since, except when the same has been unlawfully cut by unknown parties, and this fence also this defendant is enjoined from maintaining, by the said writ of injunction.

On the south line of said Float in the year 1914, and some months before this suit was brought, defendant did also erect a fence, as shown on the said plat, which fence was also cut at various times, and the said injunction restrains this defendant from repairing the said fence. [126]

Defendant further states that the main watering place upon said Baca Float No. 3, is the Santa Cruz River, which runs through said Float a distance of over twelve miles, as shown by said plat; but none of the pastures enclosed by this defendant prevent the cattle of anyone whatsoever from watering at said Santa Cruz River, and therefore this defendant should not be restrained from repairing the fences of his pastures, all of which, as aforesaid, were erected and completed long before this suit was commenced. Defendant further represents that the San Jose de Soniota Grant is private property, belonging to parties not parties to this suit; that the

same is fenced as shown on the said plat; that the Sonoita Creek is also a watering place for cattle, as shown on the said plat, but all of the said Sonoita Creek within the limits of said San Jose de Sonoita Grant is fenced off by the owners of said grant; therefore, the fence surrounding the said pasture No. 2, marked "Wise Field" on said plat, on the east side thereof, does not prevent any cattle from obtaining water.

Defendant further represents that the order of this Court, of July 20th, 1914, directs that said writ of injunction do issue upon plaintiffs filing a bond to this defendant in the sum of \$5,000, but said order does not require any sureties on said bond; nor is said bond required to be in accordance with any practice or rule of this court, or with any statute; that the plaintiffs are nonresidents of the State of Arizona; that they have no property in the said State, except their alleged claim to said Baca Float No. 3, the validity of which claim is denied by this defendant, and by other defendants in this suit; and that the said order should be modified so as to require plaintiffs to give a bond with sureties to be approved by this Court, or by the clerk thereof.

WHEREFORE, this defendant prays that the said writ of injunction be modified so as not to restrain or enjoin this defendant from maintaining his said pastures aforesaid, or any of them; [127] that it be further modified so as not to restrain this defendant from maintaining any of the fences which he had erected and was maintaining at the time the petition in this suit was filed, and that the order

for said injunction be further modified by requiring plaintiffs to file a bond with at least two sureties or a satisfactory surety company, to be approved by this Honorable Court or the clerk thereof; and be otherwise modified, as this Honorable Court may deem necessary upon the hearing of all the facts relative thereto.

Defendant further prays that this Honorable Court do set a day for the hearing of this petition, and that the same be heard upon said day, and that upon said hearing said injunction be modified as aforesaid.

JOSEPH E. WISE,  
Defendant.

SELIM M. FRANKLIN

Attorney for Defendant, Joseph E. Wise.

State of Arizona,  
County of Pima,—ss.

Joseph E. Wise, being first duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has read the foregoing petition and motion and knows the contents thereof and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters he believes the same to be true.

JOSEPH E. WISE.

Subscribed and sworn to before me this 26 day of September, 1914.

My Commission expires Feb. 13, 1918.

WM. A. JACKSTADT, [Seal]  
Notary Public.

Filed September 28, 1914. [128]

*In the United States District Court for the District  
of Arizona.*

CORNELIUS C. WATTS et al.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY  
et al.,

Defendants.

**Order Modifying Injunction.**

IT IS ORDERED that the injunction against Joseph E. Wise issued in the above-entitled cause on the 20th day of July, 1914, be modified in the following particulars:

That the said Joseph E. Wise be and hereby is permitted to repair and rebuild that certain fence on Baca Float No. 3, known as the "Garden Fence," and which fence extends from a point on the easterly line of said Float about a mile and a half north of the north line of the Sonoita grant and thence extends in a general westerly and southerly direction to the north line of the Sonoita grant at a point about a mile and a half or two miles west of the east line of the Baca Float;

And also that the said Joseph E. Wise may be permitted to repair and rebuild the fence around what is known as the San Caytano pasture; and

That said injunction as herein modified shall be in force until the further order of this Court.

IT IS FURTHER ORDERED that any of the parties hereto may at any time apply to this Court

for a further or any modification of this injunction at any time upon giving reasonable notice thereof.

IT IS FURTHER ORDERED that the said Joseph E. Wise shall not drive upon or place upon that part of Baca Float No. 3, lying [129] west of Santa Cruz River, any cattle and livestock beyond and in addition to the cattle and livestock which he has now running upon said part of said Float.

IT IS FURTHER ORDERED that the modifications of the said injunction shall in no manner affect the possessioner claim of possession of either party hereto to the whole or any part of Baca Float No. 3, but said questions of possession shall be determined without regard to said modifications.

Dated this 6th day of November, 1914.

WM. H. SAWTELLE,

Judge. [130]

#### **Stipulations as to Certain Facts.**

During the trial of this case counsel for all the parties stipulated in writing and in open court that the following should also be deemed and considered as facts in this case, to wit:

#### **FACTS AS TO THE BOULDIN HEIRS.**

That David W. Bouldin, Sr., was the father of D. W. Bouldin, Jr., James E. Bouldin and P. W. Bouldin; that David W. Bouldin, Jr., never married and that he died intestate May 21, 1889; that David W. Bouldin, Sr., died at Denver, Colorado, in December, 1893, that Mrs. David W. Bouldin, his wife, died at Denver, Colorado, in December, 1893, previous to the death of David W. Bouldin; that neither David W. Bouldin, Sr., nor Mrs. David W. Bouldin,

his wife, left a will; that at the time of the death of Mrs. David W. Bouldin and David W. Bouldin, Sr., James E. Bouldin and P. W. Bouldin were their only surviving children and heirs at law; that Daisy Belle Bouldin, the first wife of James E. Bouldin, is dead; that she died intestate, and left surviving her, as her sole heirs at law, two children, David W. Bouldin, Jr., and Helen Lee Bouldin, defendants in this action.

The plaintiffs and Santa Cruz Development Co. only, also stipulated that whatever title passed from John C. Robinson to Powhatan W. Bouldin and James E. Bouldin by the deed of November 19, 1892, is now vested one-half in James E. and Jennie N. Bouldin, and one-half in David W. Bouldin, Jr., and Helen Lee Bouldin.

#### FACTS AS TO ALEXANDER F. MATHEWS.

That Alexander F. Mathews was born on or about December [131] —, 1838, at Lewisburg, W. Va., and was married in 1866 at Christiansburg, W. Va., to Laura Gardner; died at a hospital in Philadelphia, Pa., on or about December 10, 1906. He was throughout his life a resident of Lewisburg, W. Va. He was survived by his widow, Laura G. Mathews, and the following adult children: Mason Mathews, Charles G. Mathews, Elizabeth P. Mathews and Henry Mason Mathews. He left no adopted child or children or the issue of any adopted child or children, or the issue of any deceased child. He was married only once, and his marriage was dissolved only by his death.

Samuel A. M. Syme was married on or about De-

cember 13, 1866, to Mary Maxwell at Tappahanock, Va., and his said wife died at Washington, D. C., on or about March 10, 1910. At the time of his marriage said Syme was and ever since has been a resident of the State of West Virginia or the District of Columbia. The only children of the marriage are Conrad H. Syme, William Henry Syme, James C. Syme, Mary Maxwell Syme and Elizabeth S. Whitehead. Mr. Syme was married only once and his marriage was dissolved only by the death of his wife as aforesaid.

#### FACTS AS TO THE HEIRS OF JOHN IRELAND.

That John Ireland, deceased, died intestate on or about the 15th day of March, 1896, leaving surviving him as his heirs and devisees, Mrs. A. M. Ireland, his widow, Mrs. M. I. Carpenter, a daughter, Pat C. Ireland, a grandson, and son by adoption, Ireland Graves, a grandson, being the son of a deceased daughter of John Ireland and Anna R. Wilcox and Eldredge I. Hurt, grandchildren, also being the children of a deceased daughter of John Ireland; that the said Mrs. M. I. Carpenter, Pat C. Ireland, Ireland Graves, Anna R. Wilcox and Eldredge I. Hurt, as the devisees and heirs of said John Ireland, are entitled to receive and have an undivided  $\frac{1}{2}$  of all the property owned [132] by said John Ireland at the time of his death, and that their interest in said property is as follows: Mrs. M. I. Carpenter, an undivided one-fourth; Pat C. Ireland, an undivided one-fourth; Ireland Graves, an undivided one-

fourth, and Anna R. Wilcox and said Eldredge I. Hurt, each an undivided one-eighth.

### **Stipulation Permitting Representatives of John Ireland to Intervene.**

It is hereby stipulated by all of the parties to this action that Mrs. M. I. Carpenter, Pat C. Ireland, Ireland Graves, Anna R. Wilcox and Eldridge I. Hurt be permitted to intervene in this action; that they be made parties defendant and be permitted to file an answer to the plaintiffs' bill of complaint and to appear in said action and make a defense thereto, it being agreed that all proceedings heretofore had and stipulations filed herein, shall apply to and bind those interveners, and that the answer of said interveners shall be deemed to be denied by all parties herein; that all the pleadings of the plaintiffs and defendants be decreed duly served on said interveners and at issue as to them, and that said interveners proceed to trial when the case is reached.

### **Stipulation as to Change of Title.**

By consent the title as it originally stood was amended by correcting the names John Bouldin and Mary Bouldin to David W. Bouldin and Helen Lee Bouldin. [133]

### **Abstract of proceedings Including Testimony and Exhibits.**

This cause came on to be tried before the Court on the 26th day of March, 1915, before the Hon. William H. Sawtelle, District Judge.

The following solicitors appeared for the respective parties, to wit:

For the Plaintiffs: Messrs. HERBERT NOBLE,  
HARTWELL P. HEATH, SAMUEL L.  
KINGAN.

For the Defendants Joseph E. Wise and Lucia  
J. Wise: Mr. SELIM M. FRANKLIN.

For the Defendants Bouldin: Messrs. JOSEPH  
W. BAILEY, WELDON M. BAILEY,  
JOHN H. CAMPBELL.

For the Defendant Santa Cruz Development  
Company: Mr. G. H. BREVILLIER.

For the Defendants Jesse H. Wise and Mar-  
garet W. Wise: Mr. JAMES R. DUN-  
SEATH.

For the Defendants (Intervenors) M. I. Car-  
penter, Patrick C. Ireland, Ireland Graves,  
Anna R. Wilcox, Eldredge I. Hurt: Mr.  
JOHN D. MACKAY.

**[Stipulation in Open Court, etc.]**

It was stipulated in open court that the plaintiffs might file an engrossed copy of their first complaint, with the various amendments thereto, the same to be designated as "Plaintiffs' Amended Complaint," which amended complaint was filed on the 26th day of March, 1915, and bears the paragraph numbers of the original complaint which was filed on the 23d day of June, 1914.

It was further stipulated in open court that the various answers and pleadings heretofore filed by the respective defendants and intervenors should be deemed and considered as the answers and plead-

ings to the said amended complaint.

It was further stipulated in open court that all new matter set forth in each of the answers of the respective defendants and intervenors should be deemed and considered as denied by the plaintiffs, and each of the other defendants [134] and intervenors, without the necessity of filing further replies or replications thereto.

### **Evidence Introduced by Plaintiffs.**

Thereupon plaintiffs introduced evidence in support of their complaint, as follows:

#### **Plaintiffs' Exhibit "A."**

Plaintiffs introduced in evidence without objection, as Plaintiffs' Exhibit "A," the opinion of the Supreme Court of the United States, in the case of Lane v. Watts, in which it was held that the location of the grant on June 17, 1863, and the approval of it by the Surveyor General of New Mexico and subsequently on April 9, 1864, by Commissioner Edmunds of the land office, transferred the title thereto to the heirs of Luis Maria Baca; and that the land would be segregated from the public domain by the filing of the Contzen survey. As it is printed in full in 234 U. S. pp. 525-542, it is not copied at length here.

#### **Plaintiffs' Exhibit "B."**

Plaintiffs introduced in evidence without objection, as Plaintiffs' Exhibit "B," the opinion of the Supreme Court of the United States denying a motion for rehearing in the said case of Lane v. Watts, in which it was held that the lands covered by the Tumacacori and Calabasas grants were not reserved

at the time of the 1863 location of Baca Float No. 3; and that the only conflict therewith which requires local adjudication is from a portion of the San Jose de Senoita grant which has been confirmed as against the United States, and the superior title thereto could not be determined [135] in the case before the Court because the parties claiming the Senoita grant were not before the Court. As it is printed in full in 235 U. S. 17 et seq., it is not copied at length here.

#### **Plaintiffs' Exhibit "C."**

Plaintiffs offered in evidence a deed in the words and figures following, the nature of the case requiring that it should be set forth *in extenso*: [136] **Deed of Conveyance from the Heirs of Luis Maria Baca to John S. Watts—Locations No. 2, 3, 4.**

KNOW ALL MEN BY THESE PRESENTS: That we, Luis Baca, Prudencia Baca, Jesus Baca, and Domingo, sons of Luis Maria Baca, residents of Pena Blanca, Territory of New Mexico; that we, Josefa Baca y Lucero, wife of Luis de Lao, and Altagracia Baca, wife of Francisco Martine, daughters of Luis Maria Baca, residents of Pena Blanca, New Mexico, in our own proper persons, and we, either in our own person or by our attorney in fact Tomas Baca; to wit: Jesus Baca, Tomas Baca, Encarnacion Baca, wife of Manuel Viscano, Josefa Baca, wife of Demetrio de Lao, Jose Baca, Tomas Baca 2nd, Trinidad Baca, wife of Fernando Delgado, Altagracia Baca, wife of Patricio Silva, children of Juan Antonio Baca, deceased, son of Luis Maria Baca; we, Francisco Silva, Isabel Silva, wife

of Vicente Amijo, Jesus Maria Silva, Benito Silva, Valentine Silva and Manuel Silva, children of Cesaria Baca, deceased, who was a daughter of Juan Antonio Baca, deceased; we, Isabel Baca, wife of Jose Decetio Leno, David Baca, Santiago Baca, Maria Baca, wife of Luis Maria Ortiz, and Adelieta Baca, children of Domingo Baca, deceased; son of Juan Antonio Baca; we, Antonio Baca, Felipa Baca, wife of Jose Baca, Jesus Maria Baca, Fernando Baca, Josefa Baca, wife of Jesus Baca, Polonia Baca, wife of Pedro Archleque, and Francisco Baca, children of Jose Baca, deceased, son of Luis Maria Baca; we, Quesciro Baca, Diego Baca, Guadalupe Baca, wife of Jesus Maria Leiva, Romaldo Baca, Martina Baca, and Paulina Baca, children of Miguel Baca, deceased, son of Luis Maria Baca; we, Luis Maria Baca, Alejandro Baca, Juan de Dios Baca, and Martino Baca, children of Matio Baca deceased, son of Luis Maria [137] Baca, deceased; we, Antonio Trujillo, Maria Josefa Trujillo, wife of Cesario Ramirez, Andres Trujillo, Juano Trujillo, children of Guadalupe Baca, daughter of Luis Maria Baca, and wife of Santiago Trujillo; and we, Josefa Lopez, wife of Nicolas Amijo, and daughter of Filicia Trujillo, deceased, daughter of Guadalupe Baca, deceased, Marto Lopez, son of said Filicia Trujillo, Altagracia Lopez, wife of Francisco Ramirez, and daughter of said Felicia Trujillo, Jesus Matio Trujillo, son of Guadalupe Trujillo, deceased, who was the daughter of Guadalupe Baca, deceased; we, Josefa Sales, wife of Jose Martini, and daughter of Rosa Baca, deceased, daughter of Luis Maria

Baca, Dolores Baca, daughter of Rosa Baca, deceased; we, Esperidion Baca, and Refugio Baca, children of Francisco Baca, deceased, son of Rosa Baca we, Josefa Baca y Sanchez, daughter of Luis Maria Baca, and wife of Juan Luis Montoya; we, Antonio Garcia, Francisco Garcia, Maria Enes Garcia, Juana Maria Garcia, and Maria de Los Angeles Garcia, children of Juana Baca, deceased daughter of Luis Maria Baca, and wife of Jose Garcia; we, Josefa Baca y Lucero, daughter of Luis Maria Baca, and wife of Luis de Lao; we, Altadecenia Baca, daughter of Luis Maria Baca, and wife of Francisco Martini; I, Tomas Cabeza de Baca, owner of the interest and claim of Manuel Baca, son of Luis Maria Baca, to his interest as heir of Luis Maria Baca, as appears by deed of conveyance executed the 17th day of June, 1861, and duly recorded in the Record Book of the Register of Deeds for Santa Ana County, Letter D, pages 6-7, and I, Tomas Cabeza de Baca, owner of the interest of Ignacio Baca, only son and heir of Ramon Baca, deceased, son of Luis Maria Baca, as appears by deed of said Ignacio Baca and Maria Guadalupe Hurtado to said Tomas Cabeza de [138] Baca, executed on the 1st day of June, 1861, and duly recorded in Record Book D. of Deeds for Santa Ana County, pages 5-6; I, Jesus Maria Cabeza de Baca, owner by purchase of the interest of Jesus Baca y Lucero 1st and the son of Luis Maria Baca, as appears by deed of said Jesus Baca y Lucero, and Maria Rafaela Amijo, his wife, executed the 20th day of August, 1861, and recorded in the Record Book Letter

D, page 12–13 of the Register of deeds for Santa Ana County; and I, Francisco Baca, owner by purchase of the interest of Domingo Baca, son of Luis Maria Baca, for and in consideration of the services of John S. Watts, for many years, in and about the business of said heirs of Luis Maria Baca, as the attorney of said heirs, and for the further consideration of Three Thousand Dollars, paid by the said John S. Watts, to Tomas Cabeza de Baca, our attorney in fact, have bargained, sold and conveyed, and by these presents do bargain, sell and convey to the said John S. Watts, of Santa Fe, New Mexico, and to his heirs and assigns forever, all our right, title and interest and demand in and to the following lands located upon by us as the heirs of Luis Maria Baca, under the 6th section of an act of Congress approved June 21st, 1860, to wit:

Location No. 2. Situate in the Canadian or Red River in the Territory of New Mexico, and described as follows, to wit: Beginning at the corner to sections 21, 22, 27, and 28 in Township 13 North, of the Base Line and Range 29 East of New Mexico Principal Meridian, running from said initial point North six miles, eighteen chains and twenty-two links; thence East twelve miles thirty-six chains and forty-four links; thence South twelve miles, thirty-six chains and forty-four links; thence North six [139] miles, eighteen chains and twenty-two links, to the place of beginning, containing Ninety-nine thousand, two hundred and eighty-nine acres and thirty-nine one hundredths of an acre, more or less.

And also Location No. 3. Situate in the Territory

of Arizona, formerly in Dona Ana County, New Mexico, and described as follows, to wit: Commencing at a point one and one-half miles from the base of the Salero Mountain in a direction North forty-five degrees East of the highest point of said mountain, running thence from said beginning point West twelve miles thirty-six chains and forty-four links; thence South twelve miles, thirty-six chains and forty-four links; thence East twelve miles, thirty-six chains and forty-four links; thence North twelve miles, thirty-six chains and forty-four links, to the place of beginning containing Ninety-nine thousand, two hundred and eighty-nine acres and thirty-nine one hundredths acres, more or less.

Also Location No. 4. Situate in Costillo County, Colorado Territory, formerly in Taos County, New Mexico, known and described as follows, to wit: Beginning at a point on the Eastern edge of the San Luis Valley, where the thirty-eighth degree of latitude crosses the dividing line of the plain and mountain; thence East along said parallel of latitude four and one-half miles; thence South at a right angle to said parallel of latitude twelve and one-half miles; thence North at a right angle twelve and one-half miles to the aforesaid parallel of latitude; thence East with said parallel of latitude eight miles, to the place of beginning, containing Ninety-nine thousand, two hundred and eighty-nine acres and thirty-nine one-hundredths of an acre [140] more or less.

TO HAVE AND TO HOLD the lands aforesaid with all of the appurtenances and privileges to the

same belonging to the said John S. Watts, and his heirs forever, in fee simple, and the said heirs of Luis Maria Baca, in person, and by their attorney in fact, Tomas Cabeza de Baca, covenant with the said John S. Watts and his heirs, for themselves and their heirs, as follows, to wit:

1st. That they are seized in fee of the lands aforesaid and have good right and title to the same.

2d. That the said lands are free from incumbrances, and that they have full power to sell and convey the same.

3d. That the said John S. Watts and his heirs and assigns shall quietly enjoy said lands forever, free from all claim or demand of the said heirs of Luis Maria Baca, their heirs, executors and administrators.

4th. That they will defend and protect the title aforesaid against all claim or claims of title arising from or under us as heirs of Luis Maria Baca, or under our heirs and executors and administrators.

5th. That the said John S. Watts and his heirs and assigns shall forever enjoy the lands aforesaid in as full and ample a manner as the heirs of Luis Maria Baca held and enjoyed the said lands, just before the execution of this conveyance.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 1st day of May, 1864.

DIEGO BACA.	(Seal)
LUIS BACA.	(Seal)
DOMINGO BACA.	(Seal)
JESUS MARIA BACA.	(Seal)

[141]

Purchaser of the interest of Jesus Baca y Lucero 2d.

FILIPE BACA, (Seal)

LUIS de LAO, (Seal)

Esposa de Josefa Baca.

JOSEFA BACA. (Seal)

MARIA ALTAGRACIA BACA. (Seal)

PRUDENCIA BACA. (Seal)

TOMAS C. de BACA, (Seal)

Attorney in fact for the heirs of Juan Antonio Baca.

TOMAS C. de BACA, (Seal)

Attorney in fact for the heirs of Jose Baca.

TOMAS C. de BACA, (Seal)

Purchaser of the interest of the heirs of Ramon Baca.

TOMAS C. de BACA, (Seal)

Attorney in fact for the heirs of Mateo Baca.

TOMAS C. de BACA, (Seal)

Attorney in fact for the heirs of Jesus Baca y Lucero 1st.

TOMAS C. de BACA, (Seal)

Purchaser of the interest of Manuel Baca.

TOMAS C. de BACA, (Seal)

Attorney in fact for the heirs of Guadalupe Baca.

TOMAS C. de BACA, (Seal)

Attorney in fact for the heirs of Rosa Baca.

TOMAS C. de BACA, (Seal)

Attorney in fact for the heirs of Josefa Baca y Sanchez.

TOMAS C. de BACA, (Seal)

Attorney in fact for the heirs of Juana Puala Baca.

JESUS M. BACA, (Seal)

Purchaser of the interest of Jesus Baca y Lucero 2d.

FRANCISCO MARTINO, (Seal)

Esposo de Ma. Altgracia Baca. [142]

Yecutado y firmado en la presencia de Bernabe Baca and Altemacio Sanchez.

Territorio De Nuevo Mexico,  
Condado De Santa Ana.

Personalmente se presenten ante me Agripito Tofoya, uno de los Jueces de Paz en y por el condado y Territorio de Nuevo Mexico los hijos y herederos de fuedo Luis Ma. C. De Baca, cuyos nombre se hallan los qualles aparecen como otorgantes y conocidos por me, como los hijos y herederos de dicho Luis Ma. C. de Baca, y quallos confessen haber ajuculando y firmado con su espontancia voluntad el antecedentes documento para los fines y considerationes en el expresadas. Maria Altgracia Baca y Josefa Baca declaraon en una examinacion separado de sus meridos, declaraon de haber firmado como su acto libre sin compuleron o influje elicate de parte de sus maridos y para su constancia lo fine yo, el Juez, con me propio mano en la presencia de los testigos en la Pena Blanco, hoy 2 de Mayo, del ano de Sor de 1864.

AGRIPITO TOFOYA,  
JUEZ de PAZ.

Which acknowledgment translated reads as follows:

Territory of New Mexico,  
County of Santa Ana,—ss.

Personally appeared before me Agapito Tafoya, one of the Justices of the Peace in and for said county and Territory of New Mexico, the children and heirs of the late Luis Maria C. de Baca, whose names are subscribed to the foregoing document by parties appearing thereunto to be duly authorized,

and who are known to me to be the children [143] and heirs of said Luis Maria C. de Baca, and they acknowledged that they voluntarily executed and signed the foregoing document for the purposes and considerations therein specified. Maria Altgracia Baca and Josefa Baca declared upon an examination apart from their respective husbands that they had signed as their free act without compulsion or undue influence on the part of their respective husbands; and in confirmation of which, I, the said Justice, sign this with my own hand and in the presence of two witnesses in Pena Blanco, this 2d day of May in the year of our Lord 1864.

AGAPITO TAFOYA,  
Justice of the Peace.

United States of America,  
Territory of New Mexico.

I, Samuel Ellison, clerk of the Superior Court of said Territory do hereby certify that Agripito Tofoya, before whom the foregoing acknowledgment was made and whose genuine signature is thereto attached, was at the time thereof, a Justice of Peace in and for said county of Santa Ana, Territory of New Mexico, duly qualified to act as such, and that his official acts are entitled to full faith and credit.

IN TESTIMONY WHEREOF I hereunto set my hand and seal of said court at Santa Fe, this 5th day of May, 1864.

[Seal]

SAM'L ELLISON,

Clerk Supreme Court of N. M. [144]

Recorded May 14, 1864, in Probate Court of Santa Fe County, New Mexico, in Book 6, pages

551–555, in Bernalillo County, New Mexico, October 21, 1864, in Volume I, pages 314–318; in San Miguel County, New Mexico, in Book 3, page 51; in Pima County, Arizona, on May 25, 1894, Book D. R. E., 26, at page 364 and also at page 547, and thereafter in Santa Cruz County, Arizona, in Book 1 D. R. E., pages 93–99, and in Book 2 D. R. E., pages 142–148.

The defendants Joseph E. Wise and Lucia J. Wise objected to the instrument, as the deed of certain heirs, on the following grounds:

First. That it is signed by Felipe Baca, but in the body of the deed itself he is not named as a grantor. He does not pretend, in the instrument itself, to convey anything to anybody. His signature is appended to a paper which is executed by others to which he is not a party, and therefore it is not his deed at all and conveys nothing as to him.

Second. The deed is signed also, "Domingo Baca," but the body of the deed recites that Franco Baca is the purchaser of the interest of Domingo Baca. The deed is not signed by Franco Baca, but it is signed by Domingo, and the face of the deed shows that Domingo when he signed the deed had parted with his interest.

Third. The deed is signed also Jesus M. A. Baca, purchaser of the interest of Jesus Baca y Lucero. The deed in the body of it recites that Jesus Maria Cabeza Baca, who we concede is the same person as Jesus M. A. Baca, is the owner by purchase of the interest of Jesus Baca y Lucero the first. It is signed by him as the purchaser of the interest of Lucero the second, and there were too of those

Luceros, the first and the second. Therefore, it is not—if he were the purchaser of the interest of Jesus Baca y Lucero the second it does not convey the interest of himself as the purchaser of Lucero the [145] first.

Fourth. The deed is also signed “Thoma C. Baca, attorney in fact for the heirs of Jesus Baca y Lucero the first.” In the body of the deed Jesus Baca y Lucero the first is not recited as a party; his heirs are not recited as parties. Tomas C. Baca is not recited as their attorney in fact. In other words, in the body of the deed Jesus Baca y Lucero the first is not a party to it by himself or his heirs or attorney in fact, or at all. Therefore, as to him, we have a deed signed by one who purports to be the attorney in fact of the heirs of Jesus Baca Lucero the first, and the heirs of Jesus Baca Lucero the first do not pretend to be parties to the instrument at all.

Fifth. The deed is also signed “Tomas C. Baca, attorney in fact for the heirs of Josefa Baca y Sanchez. Now the deed recites that Josefa Baca y Sanchez is a party of the first part—a grantor. The deed recites that Josefa Baca y Sanchez conveys, but the deed is not signed by her; it is not signed by her attorney in fact. But it is signed by Tomas C. Baca as attorney in fact for her heirs, and of course, does not convey any of her interest.

Thereupon the Court ruled that the instrument would be received in evidence subject to the objec-

#### **Plaintiffs' Exhibit "D."**

tions of the defendants Joseph E. Wise and Lucia J.

Wise, whereupon it was marked Plaintiffs' Exhibit "C."

Plaintiffs introduced in evidence without objection as Plaintiffs' Exhibit "D," a deed from Quirina Baca, Guadalupe Baca and Jesus Leyva, her husband, Paulina Baca, Martina C de Baca and Romalda Baca to John S. Watts, dated May 1, 1864, conveying all the grantors' interest in Baca Float No. 3 by [146] the description contained in Plaintiffs' Exhibit "C."

#### **Plaintiffs' Exhibit "E."**

Plaintiffs offered in evidence, as Plaintiffs' Exhibit "E," a petition signed "John S. Watts, attorney for petitioners," to the Surveyor General of New Mexico, for the confirmation of the Ojo del Espiritu Santo Grant, which is in words and figures following:

"Territory of New Mexico,

County of Santa Fe,—ss.

To the Hon. A. P. Wilbar, Surveyor General of the

Territory of New Mexico, under the Act of Congress approved 22d July, 1854.

Your petitioners, the surviving heirs at law of one Luis Maria Cabeza de Baca, deceased, would respectfully state to you that on the 23d day of May, 1815, the said Baca presented his petition to the government of the province of New Mexico, asking for a grant of land to himself and children, at a place called Ojo del Espiritu Sant, situate in the County of Santa Ana, Territory of New Mexico. On the 24th day of May, 1815, the said grant was duly made of said land by the governor of said province and on

the 13th day of June, 1815, the said Baca was duly placed in possession of the land so granted, having for their boundaries the following points—On the east the summit of the Jemez mountain; on the west, the Puerco River and the point of the Prieto Table land; on the North the table land commonly called la Vantana; on the South the Canon of La Querencia, and the boundary of the farm of Don Antonio Arimenta; all of which facts will more fully appear by reference to a copy of said Petition, Grant and Possession hereby made a part of this petition, marked as exhibit "G" herein. [147]

Your petitioners further state that the said land marks and boundaries are well known and easily pointed out, but inasmuch as no survey of said land has ever been made, the quantity of land included in said boundaries is not known to your petitioners. Your petitioners further state that the said Luis Maria Cabeza de Baca in his lifetime occupied, cultivated, lived upon and put valuable improvements upon said lands, and up to the time of his death, about the year 1830, continued to possess said lands, without any other person claiming them, nor up to this time do your petitioners know of any adverse title to said land.

Your petitioners further state that the said Luis Maria Cabeza de Baca, a short time before his death, was driven away from said land by the hostility of the Navajo Indians and it has not been since occupied on account of its exposure to the hostility of said Indians who have been almost constantly at war which has prevented its occupancy by your petition-

ers. Your petitioners further state that said lands are not now in the actual possession of anyone, nor are they claimed by any persons but your petitioners, who claim said lands as theirs absolutely, by virtue of said grant, as the heirs at law of the said Luis Maria Cabeza de Baca. Your petitioners further state that at the death of the said Luis Maria Cabeza de Baca he left him surviving, as his heirs, the following children, to wit: Luis Baca, Prudencio Baca, Jesus Baca, Sr., Jesus Baca, Jr., Felipe Baca, Domingo Baca, Manuel Baca, Josefa Baca y Salas, Josefa Baca y Sanchez, Juan Antonio Baca, Jose Baca, Jose Miguel Baca, Ramon Baca, Matia Baca, Guadalupe Baca, Altagracie Baca, Rosa Baca, Juan Paula Baca.

The said Juan Antonio died, leaving as his heirs him surviving the following children and heirs: Jesus Maria [148] Baca, Francisco Tomas Baca, Encarnacion Baca, Jose Baca, Josefa Baca, Altagracia Baca, Nicholasa Baca, Tomas Baca, Trinidad Baca, Cesaria Baca, Domingo Baca, Guadalupe Baca.

The said Jose Miguel Baca died, leaving the following children and heirs him surviving: Diego Baca, Quirina Baca, Rumaldo Baca, Guadalupe Baca, Pauline Baca and Martine Baca.

The said Ramon Baca died leaving him surviving the following child and heir: Ignacio Baca.

The said Matio Baca died leaving him surviving the following children and heirs: Luis Baca, Alejandro Baca, Juan de Dios Baca and Martin Baca.

The said Jose Baca died leaving him surviving the following children and heirs: Anaonio Baca, Felipa

Baca, Jose Maria Baca, Francisco Baca, Fernando Baca, Polonio Baca.

Your petitioners further state that the above list contains the names of all the living children and grandchildren of the said Luis Maria Cabeza de Baca.

Your petitioners further state that Cesaria Baca, daughter of Juan Antonio Baca, is dead and left her surviving the following children and heirs: Francisco Silva, Isabel Silva, Jesus Maria Silva, Benito Silva, Balentin Silva and Manuel Silva. The said Domingo Baca, son of the said Juan Antonio, is dead, leaving him surviving the following children and heirs: Ysabel Baca, David Baca, Eulalio Baca, Santiago Baca and Adeleida Baca. The said Guadalupe Baca, daughter of said Luis Maria Cabeza de Baca, is dead, leaving her surviving the following children and heirs: Maria Trujillo, Antonio Trujillo, Andres Trujillo and Feliciana Trujillo, Juana Trujillo. Your petitioners further state that Rosa Baca, daughter of Luis C. de Baca, died leaving her surviving [149] the following children and heirs: Francisco Baca, Dolores Baca, Josefa Salas.

Your petitioners further state that Juana Paula Baca, daughter of Luis Maria C. de Baca, died, leaving the following children and heirs: Antonio Garcia, Francisco Garcia, Inez Garcia, Ana Maria Garcia and Josefa Garcia. Your petitioners further state that Feliciana Trujillo, daughter of Guadalupe Baca, is dead, leaving the following children and heirs her surviving: Josefa Lopez, Marto Lopez, Altgracia Lopez.

Your petitioners further state that all of said heirs are residents of the Territory of New Mexico and desire to occupy and cultivate said lands so soon as their title is confirmed and they can do so with safety from the hostility of the Navajo Indians, now in a state of war. Your petitioners further state that they have an absolute title in fee to said lands and ask that the same be confirmed under the act of July 22, 1854, in order that they may obtain a legal title thereto, in conformity with the provisions of said act.

All of which is respectfully submitted.

JOHN S. WATTS,  
Attorney for Petitioners.

**Plaintiffs' Exhibit "F."**

Plaintiffs introduced in evidence, as Plaintiffs' Exhibit "F" a certified copy from the Surveyor General's Office of New Mexico, of the testimony of Jose Francisco Salas and Manuel Hurtado taken by the Surveyor General of New Mexico in connection with plaintiff's Exhibit "E" which accompanied the petition above mentioned, which instruments were in words and figures following, to wit: [150]

The Heirs of LUIS MARIA CABEZA DE BACA,  
vs.

THE UNITED STATES.

Jose Francisco Salas being first duly sworn upon his oath states:

Question 1st: Where do you reside, are you in any way related to the claimants or have you any interest in this claim?

Answer: I live in Pena Blanca. I am not related to the claimants, nor have I any interest in the claim.

Question 2d: Did you know Luis Maria Cabeza de Baca during his lifetime?

Answer: I did.

Question 3d: When did he die?

Answer: I saw him die, and was present when he was buried, but do not recollect exactly how long ago it was, but think it was in the year 1827.

Question: Please examine the list of the children, grandchildren and great-grandchildren, set forth in the petition in this case and state who they are.

Answer: I have examined the list set forth in said petition and it is a correct list of the names of all the children now living, also of the heirs of those that are dead.

Question: Where do said heirs reside?

Answer: In Mexico.

Question: Are you acquainted with a grant of land made to Luis Maria Cabeza de Baca, called Ojo del Espiritu Santo, and if so, state if it was ever occupied, cultivated and [151] improved by him in his lifetime, and if so, how long, and for what cause the occupancy was abandoned.

Answer: I am acquainted with said grant of land, it was occupied for about fifteen years by Luis Maria C. de Baca, and the lands extensively cultivated during the time he lived there; he was compelled to leave it on account of the hostility of the Navajo Indians. I remained there during about fifteen years while Don Luis Maria C. de Baca was living on said grant and after his death.

Question: State if it is occupied at present or not, and if not occupied, why not.

Answer: It is still unoccupied; its occupancy would be dangerous on account of the continued hostility of the Navajos. Attempts were frequently made to settle there, but were unsuccessful on account of the Indians.

Question: What number of animals did he have on said grant during his residence there?

Answer: The number of mares, horses and cattle which he then had there was about eight hundred.

Question: Have you ever heard of any other persons claiming said land but the heirs of Luis Maria C. de Baca?

Answer: It never was claimed by any person but the said heirs.

Question: When Don Luis Maria Cabeza de Baca first went there was there any person living upon said grant.

Answer: It was several leagues beyond Jamez and unoccupied up to the time he went there with his family and hired men.

His

JOSE FRANCISCO X SALAS,  
mark

Witness:

J. HOWE WATTS,  
THO. MEANS. [152]

Sworn and subscribed before me this 23d day of October, A. D. 1860.

A. P. WILBAR,  
Surveyor General of New Mexico.

Manuel Hurtado being first duly sworn upon his oath states:

Question: Where do you reside, are you related to the heirs of Luis Maria Cabeza de Baca, or interested in this claim?

Answer: I live in the County of Santa Ana, I am not related to the heirs nor interested in the claim.

Question: Do you know the place called Ojo del Espiritu Santo and if so who owned and lived upon it?

Answer: I know the place; it was owned by Don Luis Maria Cabeza de Baca and was resided upon by him until he was driven away by the Navajo Indians about the year 1816 or 1817. I went and assisted him in removing him and his family and what remained of his stock from that place; he remained there a considerable length of time but what number of years I cannot state; after the death of Don Luis Maria C. de Baca it was occupied by his heirs until they were compelled to leave it on account of the hostility of the Indians.

Question by the Sur. Genl. Do you know personally the heirs of Luis Maria Cabeza de Baca, who occupied it after his death?

Answer: I did and my son-in-law went there with them with their flocks and herds.

Question by the same: Are the names mentioned in the petition by the attorney J. M. Watts familiar to you and do you know them?

Answer: I do not know them and the names men-

tioned in the petition are correct.

His

MANUEL X HURTADO,  
mark. [153]

Witness:

J. HOWE WATTS,  
THO. MEANS.

Sworn and subscribed before me this 23d day of October, A. D. 1860.

A. P. WILBAR,  
Surveyor General of New Mexico.

All the defendants Wise by their counsel objected to the introduction of said instrument in evidence for the reason that it does not pretend to be a statement of all the heirs; that it is the *ex parte* affidavit of one who was not an heir himself, and not related to Luis Maria Baca, nor does it pretend to be from all of the children or all of the heirs of Luis Maria Baca. The Court overruled the objection and permitted said instrument to be received in evidence, to which ruling of the Court the defendants Joseph E. Wise and Lucia J. Wise, by their counsel, then and there duly excepted.

#### **Plaintiffs' Exhibit "G."**

Plaintiffs introduced in evidence without objection, a certified copy of a deed from Domingo Baca and Rosalia Garcia to Francisco Baca, dated February 19, 1863, the original being in Spanish, and an English translation thereof, conveying all [154] the interest of the grantors in the lands of Luis Maria Cabeza de Baca, deceased.

**Plaintiffs' Exhibit "H."**

Plaintiffs introduced in evidence without objection, as Plaintiffs' Exhibit "H," a certified copy of a deed in Spanish with the English translation from Jesus Baca y Lucero and Maria Rafael Armijo, to Jesus Maria C. de Baca, dated August 20, 1861, conveying all the interest of the grantors in the lands of Luis Maria Cabeza de Baca, deceased.

**Plaintiffs' Exhibit "I."**

Plaintiffs introduced in evidence without objection, as Plaintiffs' Exhibit "I," a deed from Manuel Baca to Tomas C. de Baca, dated June 17, 1861, conveying all the land grantor may receive as heir of his deceased father, Luis Maria Cabeza de Baca.

**Plaintiffs' Exhibit "J."**

Plaintiffs introduced in evidence without objection, as Plaintiffs' Exhibit "J," a certified copy of a deed from Ignacio Baca and wife to Tomas C. de Baca, dated June 1, 1861, conveying the interest grantors may or can receive as heir of his deceased father Ramon Baca in the land of Luis Maria Baca, deceased.

Plaintiffs introduced in evidence without objection, certified copies of the following papers bearing the following Exhibit Numbers:

**Plaintiffs' Exhibit "K-1."**

This exhibit is in words and figures following, the nature of the case requiring it to be printed in full:

Santa Fe, New Mexico, June 17, 1863.

John A. Clark, Surveyor General, Santa Fe, New Mexico: I, John S. Watts, the attorney of the heirs

of Don Luis Maria Cabeza de Baca, have this day selected as one of the five locations confirmed to said heirs under the 6th section of the act of Congress approved June 21st, 1860, the following tract, to wit: Commencing at a point one mile and a half from the base of the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles thirty-six chains and forty-four links, thence south twelve miles thirty-six chains and forty-four links, thence east twelve miles thirty-six [155] chains and forty-four links, thence north twelve miles thirty-six chains and forty-four links to the place of beginning, the same being situate in that portion of New Mexico now included by act of Congress approved February 24, 1863, in the Territory of Arizona—said tract of land is entirely vacant unclaimed by anyone, and is not mineral to my knowledge.

JOHN S. WATTS,  
Attorney for the Heirs of Luis Maria Cabeza de  
Baca.

**Plaintiffs' Exhibit "K-2."**

Certificates of register and receiver approving said 1863 location, dated March 25, 1864.

**Plaintiffs' Exhibit "K-3."**

Approval of 1863 location by the Surveyor General of New Mexico.

**Plaintiffs' Exhibit "K-6."**

Letter and order of Commissioner of General Land Office, dated April 9, 1864, approving said 1863 location and ordering the survey thereof, being the

approval of Commissioner Edmunds referred to in  
Lane v. Watts, 234 U. S. 525.

**Plaintiffs' Exhibit "K-7."**

This exhibit is in words and figures following, the  
nature of the case requiring it to be printed in full:

Washington City, April 30, 1866.

Hon. J. M. Edmunds,

Commissioner of Land Office.

Sir: You will find by reference to the papers in [156] file in your office, that on the 17th of June, 1863, I filed with the Surveyor General of New Mexico an application for the location of one of the five locations confirmed to the heirs of Luis Maria Cabaza de Baca under the sixth section of the act of Congress approved June 21, 1860. I further state that the existence of war in that part of the Territory of Arizona and the hostility of the Indians prevented a personal examination of the locality prior to the location, and not having a clear idea as to the direction of the different points of the compass, when the subsequent examination of the location was being made by Mr. Wrightson, in order to have the location surveyed, it was found that the mistake made would result in leaving out most of the land designed or intended to be included in said location. Mr. Wrightson was killed by the Indians, and no survey has been made because of said mistake in this initial point of location. Under these circumstances I beg leave to ask that the Surveyor General of New Mexico be authorized to change the initial point so as to commence at a point 3 miles west by south from the building known as the Hacienda de

Santa Rita, running thence from said beginning point north 12 miles 36 chains and 44 links, thence east 12 miles 36 chains and 44 links, thence south 12 miles 36 chains and 44 links, thence west 12 miles 36 chains and 44 links to the place of beginning. I beg leave further to state that this land which will be embraced in this change of the initial point is of the same character of unsurveyed vacant public land as that which [157] would have been set apart by the location as first solicited, but is not the land intended to have been covered by said location, but the land to be included within the boundaries above designated is the land that was intended to be located and was believed to have been located upon until preparations were made to survey said location. Under this state of the case it is hoped that directions will be given to the Surveyor General to correct the mistake.

Yours respectfully,

JOHN S. WATTS,

Attorney for heirs of Luis Maria Cabaza de Baca.

**Plaintiffs' Exhibit "K-8."**

This exhibit is in words and figures following, the nature of the case requiring that it be printed in full:

Department of the Interior,

General Land Office,

Washington, D. C., May 21, 1866.

John A. Clark, Esq.,

Surveyor General, Santa Fe, N. Mex.

Sir: On the 9th of April, 1864, instruction was issued by this office to Levi Bashfor, Surveyor-Gen-

eral of Arizona, for the survey of one of the five locations confirmed to the heirs of Don Luis Maria Baca under the sixth section of the act of Congress approved June 21, 1860.

The starting point of this location of the claim was to be a point 1½ miles from the base of the Salero Mountain, in a direction north 45 degrees east [158] of the highest point of said mountain.

The original instructions aforesaid have been this day returned to this office by John S. Watts, attorney for heirs of Luis Maria Cabaza de Baca, dated April 30, 1866, together with a diagram of the intended location, but erroneously described by him in his application of the 17th June, 1863, addressed to you as the Surveyor General of New Mexico. The papers thus returned are herewith transmitted to you with directions that you cause the survey to be executed in accordance with the amended description of the beginning point which is described in Mr. Watt's application of the 30th April last, provided by so doing the out-boundaries of the grant thus surveyed will embrace vacant lands not mineral.

I am very respectfully,

J. M. EDMUNDS,

Commissioner.

**Plaintiffs' Exhibit "K-9."**

Letter in words and figures following, the nature of the case requiring that it be printed in full:

Santa Fe, N. Mex., August 15, 1877.

Commissioner General Land Office,

Washington, D. C.

Dear Sir: I have the honor to request that you

give me the permission to relocate Baca Float No. 3, which was located by my father in Arizona on land supposed to be vacant and not mineral, but which location was disproved by your office on account of its being mineral or for absence of proof that it was not mineral. The Baca heirs sold this to my father (Hon. [159] John Watts, deceased), and I am at present the attorney for all his heirs as well as part owner myself, and I respectfully request that you will aid me in getting it relocated for our benefit on lands vacant and not mineral. We now suppose its location to be on mineral lands.

Very respectfully yours,

J. H. WATTS,

**Plaintiffs' Exhibit "K-10."**

Letter from Commissioner of General Land Office to J. H. Watts, dated September 20, 1877.

"I am in receipt of your letter of the 15th ult. . . . In reply you are informed that the records of this office show that said location, which was made upon the application of John S. Watts, attorney for the heirs of Luis Maria Cabeza de Baca, dated June 17, 1863, and approved by the Surveyor General of New Mexico, on same date has not been surveyed, for the reason, it appears, that the claimants failed to deposit the necessary funds to pay the expenses of the survey, as required by the Act of June 2, 1862, and which in this case was estimated about \$900. This, however, at the present time is no obstacle to the execution of the survey, because the said Act of June 2, 1862, was repealed by the Act of February 28, 1871.

Some correspondence has been had by this office relative to the character of the land embraced in said location, whether or not the same was nonmineral as required by the 6th section of the Act of June 21, 1860, but I do not find that this location was disapproved by this office, but, on the other hand, instructions were subsequently given, May 21, 1866, for the survey according to the amended application of Mr. Watts of May 30, 1866.” [160]

**Plaintiffs' Exhibit “K—11.”**

Letter from John C. Robinson to Commissioner of General Land Office, dated February 13, 1885, in words and figures following, the nature of the case requiring that it be printed in full:

Sir: In accordance with the terms of the treaty of Guadalupe Hidalgo, all that territory known as New Mexico, formerly belonging to Mexico, was ceded to the United States.

In accordance with the terms of that treaty, the act of Congress approved June 21, 1860, was passed, by which the heirs of Luis Maria Baca were authorized to select 500,000 acres of non-mineral land in the Territory of New Mexico.

On May 1, 1864, the heirs of Baca conveyed to John S. Watts their interest above named.

On January 8, 1870, John S. Watts, sold and conveyed to Christopher E. Hawley the interest of Baca heirs in 100,000 acres of said land, which interest had been conveyed to him (Watts).

On January 13, 1870, Hawley executed a power of attorney to James Eldredge, authorizing him to [161] sell the property described in the convey-

ance made by Watts to him (Hawley).

On July 7, 1879, James Eldredge conveyed said property or interest, as attorney for Hawley, to John C. Robinson, of the State of New York, the present owner.

A certified copy of the deed from the Baca heirs to Watts, as recorded in New Mexico, and the originals of the deed from Watts to Hawley, of the power of attorney from Hawley to Eldredge, and the deed from Eldredge to Robinson are in possession of Robinson, and will be filed for examination if called for.

On June 17, 1863, John S. Watts, attorney for the heirs of Baca, notified the Surveyor General of New Mexico that a certain tract of land in the vicinity of Tubac, Arizona, had been selected as one of the tracts confirmed to said heirs. This location was approved by the Surveyor General and the approval transmitted to the General Land Office, and on April 9, 1864, the Surveyor General of Arizona was instructed to have said location surveyed.

On April 30, 1866, John S. Watts filed an amended description of the aforesaid selection, which was also approved by the Surveyor General and forwarded to the General Land Office to have the survey conform to the amended description. The survey was never made, and could not be made on account of the hostility of the Indians.

Since that date no definite action towards the location has been taken by the land office, nor [162] could the location selected have been confirmed, for the reason that the land was mineral land.

And now John C. Robinson, the present owner of the interest of the said heirs of said Baca in one-fifth of said grant of 500,000 acres, namely, 100,000 acres, asks that he may be authorized to locate the same on land non-mineral in that part of the United States which was known as being in the Territory of New Mexico on June 21, 1860.

Very respectfully, your obedient servant,

JOHN C. ROBINSON,

CHARLES A. ELDREDGE,

WM. W. BELKNAP,

Attorneys for John C. Robinson.

**Plaintiffs' Exhibit "K-13."**

Opinion of Secretary Lamar, dated June 15, 1887, overruling Commissioner Harrison's decision which had permitted John C. Robinson in the name of the Baca heirs to relocate the grant. As it is printed in 5 L. D. 705, it is not copied here.

**Plaintiffs' Exhibit "K-14."**

Opinion of Secretary Hitchcock dated July 25, 1899, rejecting the 1866 location as being substantially a relocation, instead of an amendment of the 1863 location. As it is printed in 29 L. D. 44, it is not copied here. [163]

**Plaintiffs' Exhibit "L."**

Plaintiffs offered in evidence as Plaintiffs' Exhibit "L," a paper in words and figures following, the nature of the case requiring that it be printed in full:

United States of America,  
District of Columbia.

Know all men by these presents that I, John S. Watts, of the City of Santa Fe, Territory of New Mexico, and the owner of one of the unlocated floats; containing about one hundred thousand acres of land granted to the heirs of Luis Maria Baca by Act of Congress approved 21 June, 1860, as follows to wit:

Sec. 6th. And it be further enacted that it shall be lawful for the heirs of Luis Maria Baca who make claim to the same Tract of Land as is claimed by the town of Las Vegas, to select instead of land claimed by them, an equal quantity of vacant land not mineral, in the Territory of New Mexico, to be located by them in square bodies not exceeding five in number, and it shall be the duty of the Surveyor General of New Mexico to make survey and location of the land so selected by said Heirs of Baca whenever thereunto required by them: Provided, however that the right hereby granted to said heirs of Baca shall continue in force during three years from the passage of this act and no longer.

Be it further known that the said John S. Watts has full power and authority to make the location of said Heirs under said act, and cause to be made a title in Fee for the same after such proper location and survey. [164]

Now therefore be it further known that I, the said John S. Watts, have this day sold to Wm. Wrightson of the City of Cincinnati, State of Ohio, the said

unlocated tract, with all its privileges, for and in consideration of the Sum of One Hundred and Ten Thousand Dollars, the receipt whereby is hereby acknowledged and I hereby bind myself, my heirs, executors or administrators to make a full and complete Title in Fee Simple for said land to said William Wrightson, his assigns or legal representatives whenever thereunto required.

And I, the said John S. Watts, hereby authorize and empower the said W. Wrightson to make the location under the said act in as full and ample manner as the said heirs could do the same.

Witness my hand and seal in the City of Washington, the second day of March, Anno Domini 1863.

JOHN S. WATTS. (Seal)

Witness:

JOHN S. HOLLINGHEAD.

JOHN D. BLOOR.

Five and Twenty Cents Revenue Stamps, U. S. A.  
District of Columbia,  
City and County of Washington.

On this eighth day of February in the year of our Lord, one thousand eight hundred and sixty-four before me, the subscribed John S. Hollinghead, a Notary Public in and for the County of Washington and District of Columbia, duly commissioned, qualified and authorized to take the acknowledgment of deeds, etc., in said District according to the laws therefor, personally [165] appeared John S. Watts who is personally known to me to be the individual described in and who executed the foregoing instrument of writing and he acknowledged the

same to be his act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal at my office in the City of Washington and District aforesaid this 8th day of February, 1864.

[Notarial Seal.]

JOHN S. HOLLINGHEAD,  
Notary Public.

Five Cent U. S. Revenue Stamp.

District of Columbia, to wit:

I, Reteun J. Meigs, Clerk of the Supreme Court of the District aforesaid do hereby certify that John S. Hollinghead who has signed and attested the foregoing Power of Attorney was at the time of said signing and attestation a Notary Public for said District duly commissioned and qualified and that his signature thereto is genuine.

In Testimony Whereof I have subscribed my name and affixed the Seal of Said Court this 8th day of February, 1864.

[Seal of the Court.]

R. J. MEIGS,  
Clerk of C.

5 Cent Rev Stamp. [166]

The defendants Santa Cruz Development Company and the defendants Joseph E. Wise and Lucia J. Wise, objected to the admission in evidence of said document for the following reasons: FIRST. The execution thereof in behalf of John S. Watts has not been proved. SECOND. That the purported acknowledgment thereof is not in due form, nor made

before a recognized officer.    THIRD.    That there is nothing in the paper to connect it with the 1863 location of Baca Float No. 3.    Next, the recital is that John S. Watts was the owner at that time of one of the unlocated floats.    Next, there is no allegation in the bill that there ever was any assignment of this title bond to Hawley, and the bill simply says that the plaintiffs are in possession of this paper and are entitled to its benefit.    And next, this paper purports to be an assignment of a right to locate, namely, the assignment of a beneficial power in trust to Wrightson, and inasmuch as Wrightson did not execute this power in trust, but it was exercised by the grantor therein, it does not inure to the benefit of Wrightson or any of his assignees.    Also on the ground that the same was immaterial, irrelevant and incompetent.

A written document between the parties, a title bond containing a description of the property cannot be admitted for the purpose of aiding or assisting in the construction of a deed made even in pursuance of that contract, unless it is in an action to reform, which they have disavowed this to be.

Also on the ground that the document tends to alter, vary and modify or contradict the deed of 1870 from John S. Watts to Christopher E. Hawley.

The instrument was received subject to the objections of the said defendants.    [167]

#### **Testimony of Samuel A. M. Syme.**

Thereupon the plaintiffs called as a witness on their behalf, SAMUEL A. M. SYME, who being first duly sworn, was examined and testified as follows:

I reside in Washington, D. C. I went there in

(Testimony of Samuel A. M. Syme.)

October, 1880, and have been there ever since, except the period I lived in Alexandria, three years. I have known of Baca Float No. 3 that that property existed away back of that. I mean back of '88 or '87. I was talked to and told about it back to the time of '84 and '85. I knew John S. Watts; but it is a long time back.

(Mr. Noble, solicitor for plaintiffs, showed the witness the paper marked Plaintiffs' Exhibit "L" designated as the "Wrightson title bond.")

This is one of the papers that I delivered to Messrs. Watts and Davis. Anterior to the delivery of this paper by me to Messrs. Watts and Davis, it had been in my possession, or the possession of Capt. Mathews, to my knowledge, for several years. He got it from James Eldredge. I got this paper with the other papers from James Eldredge. This paper was among the papers delivered to me by James Eldredge. I knew James Eldredge very well. I knew that there was this kind of a relationship between him (James Eldredge) and Christopher Hawley, and what he (James Eldredge) told me himself and from what I saw in the papers, that relationship; that is all.

Question by Mr. NOBLE, for Plaintiffs.—Did you know that Eldredge had a power of attorney from Christopher Hawley?

To this question the defendant Santa Cruz Development Company objected as not calling for the best evidence; that the power of attorney itself would be the best evidence as to [168] in whose favor it

(Testimony of Samuel A. M. Syme.)  
ran and of the terms of it.

Mr. NOBLE.—We will offer the power of attorney in the course of the trial.

The COURT.—The objection is overruled.

To which ruling of the Court the defendant Santa Cruz Development Company then and there duly excepted.

Question by Mr. NOBLE for Plaintiffs.—You knew that James Eldredge had a power of attorney from Christopher Hawley?

A. From what he said to me and from what I saw in the papers. I saw the power of attorney connected with the deed, and that is the way I knew that, and what he told me himself. I saw the power of attorney often and copies of it often, and I knew also from my relationship with the parties that Eldredge acted under the power of attorney from Hawley.

Mr. NOBLE.—Question. Did you receive this exhibit "L" in connection with the transfer of the title to Baca Float No. 3?

To this question defendant Santa Cruz Development Company objected, as leading and calling for a conclusion.

The Court overruled the objection, to which ruling of the Court the said defendant then and there duly excepted.

WITNESS.—I received this paper in connection with a number of papers in a satchel from Mr. Eldredge. I did not see this of course, until I was examining through the papers when I found this paper, and Mr. Eldredge had delivered it to me in among

(Testimony of Samuel A. M. Syme.)

the other papers with a satchel of papers.

Mr. NOBLE.—Question. I asked you the question, Colonel, whether you received this paper with the others in connection with the transfer of title to Baca Float No. 3.

To this question Santa Cruz Development Company objected [169] on the ground that it was leading. The Court overruled the objection, to which ruling of the Court, said defendant then and there duly excepted.

WITNESS.—I received that paper with the papers that I considered to be the title papers to Baca Float No. 3—a number of deeds, etc., coming from Hawley down. I received that paper in that connection and with those papers. We had all those deeds except one, I think, the deed from Hawley to Robinson. I knew where it was because I saw a letter in among the papers from Robinson, stating—writing for the deed, and I knew where that deed was—was with him from that letter, and this paper, together with other papers were received by me in connection with the transfer of Baca Float No. 3.

Cross-examination of the witness, S. A. M. Syme, by

Mr. BREVILLIER, Solicitor for Defendant  
Santa Cruz Development Company.

WITNESS.—I think it was in the fall of 1894 or the winter of 1895 when I received those papers. I am most sure it was. I looked into the satchel to see what was in the papers as soon as I received it pretty much, the day after it or that night, just at the time almost. As soon as I received the papers

I commenced going over them. Now, the deed which I received for an interest in the Baca Float No. 3 was in 1896, that is by my recollection. I have forgotten the date of the deed exactly, but to my recollection it was about that time.

Thereupon the defendant Santa Cruz Development Company moved the Court to strike out the testimony of the witness with reference to any statement that the papers were delivered to him during the course of the title, as he fixed the delivery to him in 1894, and the date of his deed in 1896, and the capacity in which he received the papers has not been shown; [170] it may have been as bailee for some one. Furthermore, I assert now, and I believe it will not be contradicted that Christopher E. Hawley, by James Eldredge, his attorney in fact, conveyed his interest in Baca Float No. 3 to John C. Robinson in the year 1884 or 1885, and this is something that was done by Eldredge, whose connection with the title at that time is not shown, ten years or more thereafter. It is not part of any *res gestae*. It has nothing to do with the transaction. The witness was not a grantee, was not a person interested in the title, nor was Eldredge.

The motion was denied by the Court and thereupon said defendant then and there duly excepted to the ruling of the Court.

#### **Plaintiffs' Exhibit "M."**

Plaintiffs offered in evidence as Plaintiffs' Exhibit "M," under the stipulation as to the record in Lane v. Watts, letter in the words and figures following,

the nature of the case requiring that it be printed in full:

“Santa Fe, New Mexico, March 27, 1864.

W. Wrightson, Esq.,

Dear Sir: You will please find enclosed the Certificate of the Register and Receiver that the location made in Arizona is vacant and not mineral so far as the records of their office show. I hope this certificate will enable you to get the location confirmed.

With kind regards, I remain,

Yours,

JOHN S. WATTS.”

[Endorsed]: 137,373. Received at the Gen. Land Office, Washington, D. C., May 26, 1864. John S. Watts, Santa Fe, N. Mex. Mar. 27/64. Encloses a Certificate of the Regr. at Santa Fe, N. M., to a Location No. 3, for the Heirs of Louis Maria Cabeza de Baca, in Arizona. File With the Case. Hawes.

To the introduction in evidence of this letter, the defendants Santa Cruz Development Company and Joseph E. [171] Wise and Lucia J. Wise objected that there was no stipulation between the parties hereto which authorized plaintiffs to introduce a mere copy of said alleged letter; that the stipulation heretofore entered into in regard to the introduction of evidence only covered letters from officials of the United States Government, and did not cover letters between private individuals; therefore, that they objected to the introduction of the alleged private correspondence, and on the further ground that the said alleged paper is incompetent, irrelevant and imma-

terial, and has no bearing on the issues herein.

The objection of said defendants was overruled by the Court, to which ruling of the Court the said defendants then and there duly excepted.

Mr. Brevillier, counsel for Santa Cruz Development Company, asked counsel for plaintiffs if he offered the endorsements on Plaintiffs' Exhibit "M" that were made by N. Hawes, to which counsel for plaintiffs stated that they did.

Thereupon the Santa Cruz Development Company objected to the introduction in evidence of said endorsements on said letter as being immaterial, incompetent and irrelevant, an endorsement on a paper made at some unascertained time by some clerk of the land office.

The Court overruled the objection and thereupon the said defendant duly excepted to said ruling of the Court.

#### **Plaintiffs' Exhibit "P."**

Plaintiffs then introduced in evidence without objection as Plaintiffs' Exhibit "P," a letter dated December 2, 1914, addressed to the Commissioner of the General Land Office by the First Assistant Secretary of the Interior, directing the Commissioner, in accordance with the mandate of the Supreme [172] Court, to file the Contzen survey, and transmitting the Contzen survey.

#### **Plaintiffs' Exhibit "Q."**

Plaintiffs introduced in evidence without objection, as Plaintiffs' Exhibit "Q," the plat of the Contzen survey referred to in the letter from the First Assistant Secretary of the Interior to the Commis-

sioner of the General Land Office, of date December 2, 1914. The original map so introduced in evidence, is, by order of the Court and stipulation of the parties, transmitted with the record, and therefore no copy is annexed hereto.

**Plaintiffs' Exhibit "R."**

Plaintiffs then introduced in evidence without objection, as Plaintiffs' Exhibit "R," certified copy of a letter from the Assistant Commissioner of the General Land Office to the Secretary of the Interior, dated December 14, 1914, stating, that in compliance with the letter of December 2, 1914, the Contzen survey, with the accompanying field notes had been filed and transmitted to the local land office.

Plaintiffs then introduced in evidence the originals or certified copies of the following deeds through which they deraign their title:

**Plaintiffs' Exhibit "N."**

A deed in words and figures following, the nature of the case requiring that it be printed in full:

This indenture made the eighth day of January, in the year one thousand eight hundred and seventy, between John S. [173] Watts of Santa Fe in the Territory of New Mexico, U. S. A., party of the first part and Christopher E. Hawley of Wilkesbarre, in the State of Pennsylvania, U. S. A., party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar and other valuable consideration, lawful money of the United States of America, to me in hand paid by the party of the second part, at or before the ensealing and delivery of these presents,

the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents do remise, release and quitclaim unto the said party of the second part, and to his heirs and assigns, forever, All that certain tract, piece or parcel of land lying and being in the Santa Rita Mountains in the Territory of Arizona, U. S. A., containing one hundred thousand acres, be the same more or less, granted to the heirs of Luis Maria Cabeza de Baca by the United States and by the said heirs conveyed to the party of the first part by deed dated on the 1st day of May, A. D. 1864, Bounded and described as follows: Beginning at a point three miles West by South from the building known as the Hacienda de Santa Rita, running thence north twelve miles thirty-six chains and forty-four links, running thence east twelve miles, thirty-six chains and forty-four links, thence south twelve miles, thirty-six chains and forty-four links, thence west twelve miles, thirty-six chains and forty-four links, to the point or place of beginning: The said tract of land being known as Location No. 3 of the Baca Series, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, [174] and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; And also the estate, right title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above-described premises, and every part and parcel thereof, with the appurtenances; To have and to hold all and singular

the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN S. WATTS. (Seal)

Sealed and delivered in the presence of

WM. H. CLARKSON.

CHARLES NETTLETON.

State of New York,

City and County of New York,—ss.

Be it remembered that on this 8th day of January, A. D. 1870, before me, Charles Nettleton, a Commissioner of the Territory of Arizona, in and for the State of New York, duly appointed and commissioned by the Governor of said Territory, duly sworn and dwelling in said city of New York, personally appeared John S. Watts, personally known to me to be the same person described in and who executeted the within Instrument of writing, who acknowledged to me that he had executed the same for the uses and purposes therein mentioned, and that the same was his free and voluntary act and deed. [175]

In Witness Whereof I have hereunto set my hand and affixed my official seal.

(Official Seal) CHARLES NETTLETON,

Commissioner for Arizona in New York.

State of New York,

City and County of New York,—ss.

Be it remembered that on this 8th day of January, A. D. 1870, before me, Charles Nettleton, a Notary

Public in and for the City, County and State of New York, duly commissioned and sworn, and dwelling in the said city of New York, personally came John S. Watts, to me personally know to be the same person described in and who executed the within Instrument, who signed and sealed the same in my presence, and acknowledged to me that he executed the same as his act and deed, freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal.

CHARLES NETTLETON,  
Notary Public in and for the City and County of  
New York, State of New York.

Vu au Consulat general de France aux Etats Unis  
pour legalization de la signature ci dessus de Mr.  
Charles Nettleton, Notaire Public pour et dans la  
ville et l'Etat de New York.

New York, le 8 Janvier, 1870, pour le Consul  
gerant le Consulat general compeche et par delega-  
tion Le Chancelier.

(Official Seal)

G. ROUHAUD.

Recorded May 9, 1885, Pima County, Arizona.

Translation of Certificate.

Certified at the Consulate General of France in  
the United States to be the genuine signature of Mr.  
Charles Nettleton, Notary Public for and in the city  
and State of New York.

New York, Jan. 8, 1870, for the acting Consul, the  
Consul General being absent, and by delegation the  
chancellor. [176]

**Plaintiffs' Exhibit "O."**

Deed in words and figures following, the nature of the case requiring that it be printed in full:

United States of America,  
Territory of New Mexico,  
County of Santa Ana,

Know all men by these presents that we, by our attorney Tomas Cabeza de Baca duly authorized to execute deed for us, Luis Baca, resident of Los Alamos, San Miguel County, New Mexico; Prudencio Baca, resident of Loma Parda in Mora County, New Mexico, We, Jesus Baca, Tomas Cabeza de Baca, Encarnacion Baca, wife of Manuel Viscara, Josefa Baca, wife of Demetrio de Lao, Jose Baca, Tomas Baca 2nd, Trinidad Baca, wife of Fernando Delgado, Altagracia Baca, wife of Patricio Silva, all children of Juan Antonio Baca deceased, a son of Luis Maria Baca, deceased; We, Francisco Silva, Isabel Silva, wife of Vincente Arnujo, Jesus Maria Silva, Benito Silva and Manuel Silva, children of Cesaria Baca, deceased, who was a daughter of Juan Antonio Baca, deceased, who was son of Luis Maria Baca, deceased; We, Isabel Baca, wife of Jose Doroteo Sina, David Baca, Santiago Baca, Maria Baca, wife of Jesus Ma. Critz, children of Domingo Baca, deceased, son of Juan Antonio Baca, deceased, son of Luis Ma. Baca, deceased; We, Eliza, Refugia and Siria Salazer, children of Nicolasa Baca, wife of Tomas Salazar and daughter of Juan Anto Baca, deceased, and son of Luis Ma. Baca, deceased; We, Antonio Baca, Felipa Baca, wife of Jose Baca, Jesus

Ma. Baca, Fernando Baca, Josefa Baca, wife of Jesus Baca, Polonia Baca, wife of Perdo Archireque and Fransisco Baca, children of Jose Baca, deceased, son of Luis Ma. Baca, deceased; I, Diego Baca, son of Miguel Baca, deceased, son of Luis Maria Baca, deceased; We, Luis Maria Baca, Alexandro Baca, Juan de Dios Baca and Martin Baca, children of Mateo [177] Baca, deceased, son of Luis Ma. Baca, deceased; We, Antonio Trujillo, Maria Josefa Trujillo, wife of Cesario Ramirez, Andres Trujillo, Juana Trujillo, children of Guadalupe Baca, deceased, wife of Santiago Trujillo and daughter of Luis Maria Baca, deceased; We, Josefa Lopez, wife of Nicolas Arnujo and daughter of Feliciana Trujillo, deceased, daughter of Guadalupe Baca, deceased, daughter of Luis Maria Baca, deceased; Mateo Lopez, son of Feliciana Trujillo, Altagracia Lopez, wife of Francisco Ramirez and daughter of said Feliciana Trujillo, Jesus Ma. Trujillo, son of Guadalupe Trujillo, deceased, who was daughter of Guadalupe Baca, deceased daughter of Luis Ma. Baca, deceased; I, Antonio Montoya, son of Josefa Baca y Sanchez, deceased, and wife of Juan Luis Montoya; We, Antonio Garcia, Francisco Garcia, Maria Ynez Garcia, Juan Ma. Garcia and Maria de los Angelos Garcia, children of Juana Paula Baca, deceased, daughter of Luis Maria Baca, deceased, and wife of Jose Garcia; We, Juliana Baca, Francequita Baca, Siguro Baca, Jose Baca, Sotero Baca and Aumaldo Baca, children of Felipe Baca, deceased; We, Luis Baca, Nestor Baca, Guadalupe Baca, Francisco Baca and Julian Baca, children of Jesus Baca y Lucero

1st deceased, son of Luis Maria Baca, deceased; I, Tomas Cabeza de Baca owner by purchase and conveyance of the interest and claim of Manuel Baca, son of Luis Maria Baca in and to the lands of Luis Ma. Baca, deceased, as will appear by deed of conveyance executed the 17th day of June, 1861, and duly recorded in the Record Book of the Register of Deeds for Santa Ana County, Letter "D" pages 6 and 7; and I, Tomas Cabeza de Baca owner by purchase and conveyance of the interest of Ygnacio Baca, only son of Ramon Baca deceased, son of Luis Ma. Baca deceased, [178] as will appear by Deed of said Ygnacio Baca and Maria Guadalupe Hurtado his wife to said Tomas C. de Baca on the 1st day of June, 1861, and duly recorded in Record Book "D" of Deeds for Santa Ana County, pages 5 and 6; I, Tomas Cabeza de Baca owner by purchase and conveyance of the interest of Maria Altagracia Baca, whose real name is Maria de Jesus Baca, wife of Francisco Martinez, daughter of Luis Ma. Baca deceased, as appears by deed of 14th November, 1864, recorded in Book "D" pages 17 and 18, of the Records of Santa Ana County, Territory of New Mexico; I, Tomas Cabeza de Baca, owner by purchase and conveyance of the interest of Rosa Baca deceased, as appears by deed of Josefa Salas and Jose Martinez, her husband, made 22d day of May, 1864, duly recorded in book D, pages 13 and 14 of the Records of Santa Ana County in the Territory of New Mexico, on the 23d day of May, 1864; I, Jesus Maria Cabeza de Baca both as heir and owner by purchase and conveyance of the interest of Jesus

Maria Baca y Lucero 2nd, and Maria Rafaelo Arnujo, his wife, as appears by deed of the 20th of August, 1861, duly recorded in the records of Santa Ana County, New Mexico, in Record Book "D" page 12 of said Record; I, Francisco Baca both as heir and as owner by purchase and conveyance of the interest of Domingo Baca and Rosalia Garcia, his wife, on the 19th day of February, 1865, and duly recorded in book "D" of the Records of Santa Ana County, New Mexico, pages 18 and 19.

All of us for and in consideration of the sum of Six thousand and eight hundred dollars, paid by John S. Watts to Tomas Cabeza de Baca, Agent and attorney in fact of the heirs of Luis Maria Baca deceased, have bargained, sold and conveyed, and do by these presents bargain, sell and convey to John S. Watts, his heirs and assigns forever, the following described tract of land, situate in the Territory of Arizona and bounded as follows, to wit: Beginning at the [179] head of Francis Creek at a certain monument erected by John Moss on his trail from Fort Mohave to Prescott in the year 1864, near the large black or burnt mountain, said Francis Creek being one of the tributaries of Bill Williams Fork, commencing at said monument for a centre of the west line, and running from said centre north six miles and eighteen 22/100 chains, thence east twelve miles and thirty-six 44/100 chains, thence south twelve miles and thirty-six 44/100 chains, thence west six miles and eighteen 22/100 chains, which said tract of land contains ninety-nine thousand two hundred and eighty-nine 39/100 acres

(99,289 39/100) and which said land was duly located in the office of the Surveyor General of the Territory of New Mexico by the said heirs of Luis Maria Baca in accordance with the provisions of the Sixth Section of an Act of Congress passed June 21, 1860, entitled "An Act to confirm certain private land claims in New Mexico," and found in Volume 12, page 71 of the United States Statutes at Large, the said location being known as Number Five.

To have and to hold the said lands to the said John S. Watts, his heirs and assigns forever, free from all claims of ourselves as heirs of Luis Maria Baca, deceased, and of all persons claiming by, through, or under us, together with all the privileges and appurtenances to the said land belonging and the said heirs of the said Luis Maria Baca, and the said Tomas Cabeza de Baca as owner and as the attorney in fact of the said heirs of Louis Maria Baca deceased, now covenant and agree with the said John S. Watts, his heirs and assigns as follows:

First. That they are the sole lawful heirs of Luis Maria Baca; that they are seized in fee of said land and have good right and title to the same and authority to sell [180] and dispose of the same; that said land is free from all incumbrances resulting from them.

Second. That the said John S. Watts, his heirs and assigns shall quietly enjoy the possession of said land free from all claim or demands of the said heirs of Luis Ma. Baca, their heirs, executors, administrators and assigns.

Third. That we will defend and protect the title of the said John S. Watts, his heirs and assigns, to

the said lands against all claims and demands arising through or under us as heirs of the said Luis Maria Baca, deceased, or under persons claiming to be heirs of Luis Ma. Baca, deceased; and that the said John S. Watts, his heirs and assigns shall have and hold said lands in as full perfect and ample a manner as the said heirs of Luis Ma. Baca, deceased, had and held said lands just before the execution of said conveyance; and the said heirs of Luis Ma. Baca, above mentioned, now ratify and confirm the title made by us by our attorney, Tomas Cabeza de Baca to John S. Watts, his heirs and assigns on the 1st day of May, 1864, for the lands described in Location Number two, Situate on the Canadian River in San Miguel County, New Mexico, and Location Number Four Situate in Saguatch County, Colorado Territory, and Location Number three, situate in Arizona Territory, containing each 99,289 39/100 acres, the boundaries of which are set forth and described in said deed; and the said heirs of the said Luis Maria Baca, deceased, executing this deed as herein set forth, relinquish and quitclaim to said John S. Watts, his heirs and assigns, all their right, title and interest in all the lands in said deed of May 1st, 1864, mentioned and described.

WITNESS our hands and seals of our said [181] attorney, Tomas Cabeza de Baca, this 30th day of May, A. D. 1871.

TOMAS C. DE BACA,  
per LUIS BACA.

(Seal)

POLONIO BACA,  
FRANCISCO BACA,  
per PRUDENCIO BACA.

(Seal)

(Seal)

EVEDERO DE JOSE BACA (Seal)  
FINADO  
TOMAS C. DE BACA, (Seal)  
per DIEGO BACA, (Seal)  
EVIDORO DE MIGUEL BACA,  
TOMAS C. DE BACA, (Seal)  
per LUIS MARIA BACA.  
ALEXANDRO BACA, (Seal)  
JUAN DE DIOS BACA, (Seal)  
MARTIN BACA EVEDERAS, (Seal)  
DE MATEO BACA FINADO,  
TOMAS C. DE BACA, (Seal)  
per BENITO SILVA.  
ANTONIO TRUJILLO, (Seal)  
MARIA JOSEFA TRUJILLO, (Seal)  
ANDRES TRUJILLO, (Seal)  
JUANA TRUJILLO, (Seal)  
FELICIANA TRUJILLO, (Seal)  
GUADALUPE TRUJILLO, (Seal)  
JOSEFA LOPEZ, (Seal)  
MATEO LOPEZ, (Seal)  
ALTAGRACIA LOPEZ, (Seal)  
JESUS MARIA TRUJILLO, (Seal)  
TODAS EVEDERAS DE GUADALUPE  
BACA,  
TOMAS C. DE BACA, (Seal)  
per JOSEFA BACA.  
ANTONIO MONTOYA, (Seal)  
TOMAS DE BACA, (Seal)  
per PRUDENCIO BACA.  
TOMAS C. DE BACA, (Seal)  
per JESUS BACA.  
ENCARNACION BACA, (Seal)

JOSEFA BACA,	(Seal)
JOSE BACA,	(Seal)
TOMAS BACA,	(Seal)
TRINIDAD BACA,	(Seal)
ALVAGRACIA BACA,	(Seal)
FRANCO SILVA,	(Seal)
ISABEL SILVA,	(Seal)
JESUS MA. SILVA Y BACA,	(Seal)
MANUEL SILVA,	(Seal)
ISABEL BACA,	(Seal)
DAVID BACA,	(Seal)
SANTIAGO BACA,	(Seal)
EULALIO BACA,	(Seal)
ELISA SALAZA,	(Seal)
SIRIA SALAZA,	(Seal)
REFUGIA SALAZAR,	(Seal)
EVEDERAS DEL FINADO,	(Seal)
JUAN ANT. C. DE BACA TOMAS C. DE BACA,	
ANT. BACA,	(Seal)
JESUS MA. BACA,	(Seal)
[182]	
TOMAS C. DE BACA,	
LUIS BACA,	(Seal)
NESTOR BACA,	(Seal)
GUADALUPE BACA,	(Seal)
FRANCO BACA,	(Seal)
JULIAN BACA,	(Seal)
EVEDERAS DE JESUS BACA TODOS EVE- DERAS DE JUANA FINADO PAULA BACA,	
TOMAS C. DE BACA,	(Seal)

DUEÑO DEL INTERESO DE MANUEL  
BACA,

YONO BACA,

MA. ALTAGRACIA BACA,

JOSEFA SALAS.

FRANCO BACA, (Seal)

EVEDERAS DE JOSEFA BACA y SAN-  
CHEZ FERNANDO BACA, (Seal)

TOMAS C. DE BACA, (Seal)

per ANT. GARCIA.

FRANCO GARCIA, (Seal)

MA. YNEZ GARCIA, (Seal)

JUAN MA. GARCIA, (Seal)

MA. DE LOS ANGELOS GARCIA, (Seal)

TOMAS C. DE BACA, (Seal)

per JULIAN BACA. (Seal)

BRANCA BACA, (Seal)

SEGUIRO BACA, (Seal)

JOSE BACA, (Seal)

SOTERO BACA, (Seal)

ROMALDO BACA, (Seal)

Dueno del interesode Donigo Baca todo hijos A.  
Felipe.

JESUS BACA Y GALLEJOS, (Seal)  
BACA FINADO.

Dueno del intereso de Jusus Baca 2nd.

Testigo Bernabe Baca, Carlos Conklin.

United States of America,

Territory of New Mexico,

County of Santa Ana,—ss.

This day personally appeared before me, Bernati  
Baca, clerk of the Probate Court in and for said  
county and territory, the above-named Tomas

Cabeza de Baca, Francesco Baca and Jesus Baca, the above-named grantors and as attorney of the heirs of Luis Maria Baca, deceased, to me well known to be the identical persons whose names are signed to [183] the foregoing deed of conveyance, and in my presence acknowledged the execution of the same to be their voluntary act and deed for the purpose therein mentioned, and I further certify that the interlineations on Page 1 between the lines 11 and 12 from the bottom in these words "We Elisa, Refugia and Siria Salazar, children of Nicolasa Baca, wife of Tomas Salazar and daughter of John Antonio Garcia, deceased, son of Luis Ma. Baca, deceased, was made before the execution of said deed.

WITNESS my hand and private seal, their being no official seal of said Court, at Pena Blanca this 30th day of May, A. D., 1871.

BARNATI BACA, (Seal)  
Escribano de la cortedo Pricetas.

United States of America,  
Territory of New Mexico.

I, Henry Wetter, Secretary of the Territory of New Mexico, certify that Barnati Baca Esq., who signed the foregoing was at the date thereof clerk of the Probate Court for Santa Ana County, the above is his genuine signature and all his official acts as such are entitled to full faith and credit. The Probate Court of Santa Ana County has no official seal.

In testimony whereof I hereunto set my hand and affix the great seal of the Territory of Santa Fe, N.

M., this 1st day of June, A. D. 1871.

(Signed) H. WETTER,  
Secy. New Mexico.

Recorded in Yavapai County, Arizona, on May 31, 1872, in Santa Cruz County, Arizona, Feb. 1, 1915.

[184]

**Plaintiffs' Exhibit "S."**

Power of attorney from Christopher E. Hawley to James Eldredge dated and acknowledged January 13, 1870, giving said Eldredge power to sell, dispose of and convey:

"All my right, title and interest in all that certain tract, parcel or piece of land containing one hundred thousand acres, be the same more or less, granted to the heirs of Luis Maria Cabeza de Baca by the United States and by the said heirs to John S. Watts of Santa Fe in the Territory of New Mexico, United States of America, by deed dated the 1st day of May, A. D., 1864, and by the said Watts conveyed to me by deed dated the eighth day of January, 1870, bounded and described as follows:

Beginning at a point three miles west by south of the building known as Hacienda de Santa Rita, running hence north twelve miles, thirty-six chains and forty-four links, thence south twelve miles, thiryt-six chains and fortyfour links, thence east twelve miles, thirty-six chains and forty-four links, to the point or place of begining, the said tract of land being known as location No. 3 of the Baca series. For more particularlar description of which reference is had to said conveyance."

Recorded in the office of the County Recorder of Pima County, Arizona, May 9, 1885.

**Plaintiffs' Exhibit "T."**

Deed dated and acknowledged May 5, 1884, recorded in Pima County, Arizona, May 9, 1885, from Christopher E. Hawley by James Eldredge, his attorney in fact to John C. Robinson in words and figures following, to wit: [185]

This conveyance made this 5th day of May, A. D., 1884, between Christopher E. Hawley, of Pennsylvania, by James Eldredge of New York, his attorney in fact, of the first part, and John C. Robinson of *Binghamton*, New York, of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of One Dollar paid to the said party of the first part, by the said Robinson, the receipt of which is hereby acknowledged, and for other valuable considerations, has sold and conveyed, and by these presents does sell and convey unto the said party of the second part, and to his heirs and assigns forever, all of his right, title and interest whatever the same may be, in and to that certain tract of land situate, lying and being in the Santa Rita Mountains in the Territory of Arizona, containing one hundred thousand acres, be the same more or less, granted to the heirs of Luis Maria Cabeza de Baca by the United States, and by said heirs conveyed to John S. Watts of the Territory of New Mexico, by deed dated on the first day of May, A. D., 1864, and by said Watts conveyed to the said Christopher E. Hawley by deed dated on the eighth day of January, A. D., 1870, bounded and described as follows:

Beginning at a point three (3) miles west by south from the building known as the Hacienda de Santa Rita, running thence north twelve miles, thirty-six chains and forty-four links, running thence east twelve miles, thirty-six chains and forty-four links; running thence south twelve miles, thirty-six chains and forty-four links, running thence west twelve miles, thirty-six chains and forty-four links, to the place of beginning. The said tract of land being known as Location No. 3 of the Baca series, together with all and singular the [186] tenements, hereditaments and appurtenances thereunto belonging, and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, in and to the above-described premises and every part and parcel thereof, with the appurtenances, including in this conveyance all the rights and claims of the heirs of said Baca, or of those persons claiming under them, that is to say, all the right, title and interest of the said party of the first part to said location, or to any location elsewhere, under the act of Congress approved June 21st, 1860, or under any decision of any Department of the Government, made or hereafter to be made, or act of Congress passed, or to be passed.

TO HAVE AND TO HOLD, said claims and rights and all and singular the above-mentioned and described premises unto the said party of the second part, his heirs and assigns forever.

This conveyance is made under and by virtue of a power of attorney made and executed by the said

Christopher E. Hawley to the said James Eldredge, authorizing him to negotiate, sell and dispose of and convey all of the right, title, and interest of said Hawley in said above-described property, which said power of attorney was executed in the city of New York, on the thirteenth day of January, A. D., 1870, and was duly acknowledged on the same date before Charles Nettleton, Notary Public.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal on the day and year first above written.

CHRISTOPHER E. HAWLEY, (Seal)  
By JAMES ELDREDGE,  
His Atty. in Fact.

In the Presence of:

JOHN E. BEALL. [187]

**Plaintiffs' Exhibit "U."**

Deed from John C. Robinson to Alex F. Mathews, dated the 22d of September, 1893, acknowledged September 25, 1893, recorded in Pima County, Arizona, October 12, 1893, in words and figures following:

"This deed of assignment made this the 22d day of September, 1893, between John C. Robinson of Binghampton, New York, party of the first part, and Alex F. Mathews, of Lewisburg, West Virginia, party of the second part. Whereas, the said John C. Robinson, by deed dated December 1, 1893, and recorded in the office of the County Recorder of Pima County, Arizona Territory, did convey to John W. Cameron of Washington, D. C., a certain tract of land in said County and Territory, which is described as follows, viz.: That certain tract of land which is the southern

half of the tract of land known as Baca Float No. 3, containing 100,000 acres, more or less, the said southern half thereby conveyed by said Robinson to said Cameron containing 50,000 acres more or less, and is bounded as follows, viz.: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita, running thence north six miles, eighteen chains and twenty-two links, thence east twelve miles, thirty-six chains and forty-four links, thence south six miles, eighteen chains and twenty-two links, thence west twelve miles, thirty-six chains and forty-four links, to the beginning, together with all the tenements and appurtenances thereunto belonging, and whereas, by virtue of and as appears by a certain declaration of trust executed by the said John W. Cameron, dated the 28th day of November, 1892, and recorded in said office, and especially by the fourth (4th) section of paragraph of said declaration of trust, I am entitled to have and recover and to have paid to me [188] by the said Cameron ten (10) per centum of the money to be realized net by said Cameron from the sale of said land when by him sold, and whereas, out of said net proceeds of such sale a note of \$250.00 held by the Broom County National Bank of New York, on which I am endorser, is to be paid, and whereas, as such endorser, I have now taken up and hold said note, and whereas I have sold and desire now to assign and convey unto the said Alex F. Mathews all of my right, title and interest in and to said land above described, and to the net proceeds thereof, for my benefit, to the extent of the said ten per cent

and for my indemnity as endorser on said note, by virtue of the said declaration of trust or otherwise. Now this deed witnesseth, that for and in consideration of the premises and in further consideration of the sum of Ten (10) Dollars to me in hand paid, the receipt whereof is hereby acknowledged, I, the said John C. Robinson, party of the first part, do hereby grant and convey and assign to the said Alex F. Mathews without recourse upon me whatsoever, all of my right, title and interest in and to said land above described, and to the net proceeds thereof, by virtue of the said declaration of trust or otherwise, and I do hereby authorize the said John W. Cameron to convey and grant the said above-described tract of land of 50,000 in Pima County, Arizona Territory, to the said Alex F. Mathews, free from any and all claims, demands and interest on my part therein, or in the net proceeds thereof in and under the said declaration of trust or in any manner, in any way or upon any ground whatever. And I hereby release, acquit and discharge the said Cameron from the application of any part of the net proceeds of said sale to the payment of said note of \$250, upon which I am endorser, which has been paid and taken up by me and which I herewith surrender and turn over cancelled to the said Alex F. Mathews as witness the following signature and seal:

JNO. C. ROBINSON. (Seal) [189]

**Plaintiffs' Exhibit "V."**

Quitclaim deed from John C. Robinson to Samuel A. M. Syme, dated and acknowledged the 30th day of April, 1896, and recorded in Pima County, Ari-

zona, September 25, 1896, in words and figures following, to wit:

"This deed made the 30th day of April, 1896, between Jno, C. Robinson of Binghampton, New York, party of the first part, and S. A. M. Syme, of Washington, D. C., party of the second part:

WITNESSETH: That the said party of the first part, in consideration of the sum of Five Dollars in hand paid, doth hereby remise, release, quitclaim and convey to the said party of the second part, all his right, title and interest, both in law and in equity in and to a certain tract or body of land situate in Pima County, in the Territory of Arizona, containing some fifty thousand (50,000) acres, more or less, and described as follows, viz.:

The upper or north one-half of the tract of land of some 100,000 acres, more or less, known as Bac Location or Baca Float No. 3, bounded as follows: Beginning at a point six (6) miles eighteen (18) chains and twenty-two (22) links north of a point three miles west by south from the building known as the Hacienda de Santa Rita, thence from said beginning point north 6 miles, 18 chains and 22 links; thence east 12 miles, 36 chains and 44 links; thence south 6 miles, 18 chains and 22 links; thence west 12 miles, 36 chains and 44 links to the beginning.

As witness the following signature and seal:

JNO. C. ROBINSON. (Seal)

Witness:

EDGAR E. BROOKS. [190]

**Plaintiffs' Exhibit "W."**

Deed from Samuel A. M. Syme and Laura G. Mathews, Eliza Patton Mathews, Mason Mathews, Charles G. Mathews and Henry A. Mathews, devisees of Alexander F. Mathews, deceased, acting in their individual capacity, and the said Mason Mathews, Charles G. Mathews and Henry A. Mathews, acting in their capacity of executors of the will of Alexander F. Mathews, deceased, as grantors, to C. C. Watts and D. C. T. Davis, Jr., Trustees, dated February 8, 1907, acknowledged Feb. 8, and 11, 1907, and recorded March 20, 1914, and which without the statement of parties, signatures and acknowledgments, reads as follows:

WITNESSETH: That for and in consideration of the sum of four thousand dollars in money and other valuable considerations paid and to be paid by the parties of the second part, to the parties of the first part, the receipt whereof is hereby acknowledged, the said parties of the first part have bargained, sold and do hereby grant and convey with covenants of special warranty unto the parties of the second part, their successors and assigns forever, all that certain tract or parcel of land [191] and all their right, title and interest, both legal and equitable, therein, situate, lying and being in the counties of Pima and Santa Cruz, in the Territory of Arizona, known as Baca Float No. 3, and granted to the heirs of Luis Maria Baca, by the United States, by act of Congress approved June 21, 1860, and afterwards conveyed by the said Baca heirs to John

S. Watts by deed bearing date the 1st day of May, 1864, and recorded May 14, 1864, in the office of the Court of Pruebas of the county of Santa Fe, Territory of New Mexico, in book "C," at pages in said book marked 551, 552, 553, 554 and 555, and also recorded in the office of the Court of Pruebas of the county of San Miguel, Territory of New Mexico in the 3d book of Documents at pages marked 51, 52, 53, 54, 55, 56, 57 and 58, August 24th, 1866, and bounded and described as follows: Commencing at a point one and a half miles from the base of the Salero Mountain in a direction north, forty-five degrees east, of the highest point of said mountain, running thence from said beginning point west, twelve miles thirty-six chains, and forty-four links, thence south twelve miles thirty-six chains and forty-four links, thence east twelve miles thirty-six chains and forty-four links, thence north twelve miles thirty-six chains and forty-four links, to the place of beginning, containing ninety-nine thousand two hundred and eighty-nine acres and thirty-nine hundredths of an acre, more or less; the said tract of land being known as Baca Float No. 3, including in this conveyance all the rights and claims of the heirs of the said Baca, and of all persons claiming under them, that is to say, all the right, title and interest of the said parties of the first part to said Baca Float No. 3, as above described or to any land located elsewhere in lieu thereof, under [192] act of Congress approved on June 21st, 1860, or under any decision of any department of the Government made or hereafter to be made or act of Congress passed or to be passed.

This conveyance is made with the express power to the said parties of the second part to sell and convey, to lease, mortgage or otherwise dispose of the said real estate or any part thereof, as to them may seem best, and the purchaser or purchasers in case of such sale shall not be required to see to the application or disposition of the purchase money, and shall be held acquit of any responsibility.

It is further covenanted and agreed that the parties of the first part will give to the parties of the second part such other and further deeds and assurances as in their judgment be necessary to carry into effect the provisions of this deed.

#### **Plaintiffs' Exhibit "X."**

Deed from Powhatan W. Bouldin, Lucy Bouldin and James E. Bouldin, by their attorney in fact, D. W. Bouldin, to John C. Robinson, dated and acknowledged November 12, 1892, recorded December 20, 1892, in Pima County, Arizona, and which without the acknowledgment is in words and figures following:

THIS INDENTURE, made this twelfth day of November, A. D. 1892, between John C. Robinson of Binghamton, New York, party of the *first* and D. W. Bouldin, attorney in fact for his sons Powhatan W. Bouldin, and his wife Lucy Bouldin, and James W. Bouldin, all of Austin, Texas, parties of the second part, Witnesseth: That Whereas, the parties of the first and second parts, by deeds exchanged between them, the said parties of the first and second parts, for the consideration therein specified, have granted and conveyed, each to the other,

their heirs and assigns (the party of the first part by deed executed at [193] Binghamton, New York, dated the twenty-eighth day of June, A. D. 1892, and the parties of the second part by deed executed at Austin, Texas, dated the twenty-second day of August, A. D. 1892) one undivided half interest in all their rights, titles, property, claims and demands whatsoever, from whatever source derived and in whatever manner acquired, in and to a certain tract of land, situate, lying and being in the Santa Rita mountains in the Territory of Arizona, containing one hundred thousand acres, be the same more or less, bounded and described as follows, viz.: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita; running thence North twelve miles, thirty-six chains and forty-four links; running thence east twelve miles, thirty-six chains and forty-four links; running thence south twelve miles, thirty-six chains and forty-four links; running thence west twelve miles, thirty-six chains and forty-four links; to the place of beginning. The said tract of land being known as Location Number Three (3) of the Baca series; together with one undivided half interest in all and singular the tenements, hereditaments and appurte- nances thereunto belonging; and also one undivided half interest of all the estate, right, title and interest, as well in law as in equity of the said parties of the first and second parts, in and to the above-described premises, and of every part and parcel thereof, in whatever manner acquired by the said parties of the first and second parts.

And this indenture further witnesseth: That in order to make a full, perfect and absolute partition of the above-described premises, and in order that each of the said parties of the first and second parts may hold their share under the above-recited deeds, in severalty, the said parties of the second part do hereby grant, assign, release and confirm to the [194] said party of the first part, his heirs and assigns forever, one half of the above-described premises, bounded and described as follows, viz.: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita, running thence north six miles, eighteen chains and twenty-two links; running thence east twelve miles, thirty-six chains and forty-four links; running thence south six miles, eighteen chains and twenty-two links; running thence west twelve miles, thirty-six chains and forty-four links to the place of beginning. The said tract of land bounded and described in the sentence immediately foregoing this, being the southern half of the tract known as Location number three (3) of the Baca series, together with all and singular the tenements and appurtenances thereunto belonging, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the parties of the second part, in and to the above-described premises and every part and parcel thereof, with all the appurtenances thereof. To have and to hold said claims and rights and all and singular the above-mentioned and described premises, unto the said party of the first part, his heirs and assigns for-

ever. In Witness Whereof, the said parties of the second part have hereunto set their hands and seals the day and year first above written.

POWHATTAN W. BOULDIN,

By His Attorney in Fact,

D. W. BOULDIN. (Seal)

LUCY BOULDIN,

By Her Attorney in Fact,

D. W. BOULDIN. (Seal)

JAMES E. BOULDIN,

By His Attorney in Fact,

D. W. BOULDIN. (Seal)

In the presence of, as to D. W. Bouldin signature:

JNO. K. DONNAN.

WALTER WOODS.

**Plaintiffs' Exhibit "Y."**

Deed from John Ireland and Wilbur H. King to Alex F. Mathews, dated February 7, 1894, acknowledged April 16 and 18, [195] 1894, and recorded Sept, 15, 1894, and which, without the statement of the parties, signatures and acknowledgments, reads as follows:

WITNESSETH: That the said parties of the first part for and in consideration of the sum of five dollars to them [196] in hand paid the receipt whereof is hereby acknowledged, do hereby bargain, sell, grant, convey, remise and forever quitclaim to the said party of the second part all of their right, title and interest, under and by virtue of a deed executed to them by David W. Bouldin, Sr., dated February 21st, 1885, and recorded in the office of the county recorder of Pima County, Arizona Territory, in book

13, of Deeds to Real Estate, p. 140 et seq., in and to the following described tract or parcel of land in said county and territory, viz.: The southern one half of the tract of land known as Baca Float No. 3, containing one hundred thousand (100,000) acres, more or less, which said southern half hereby conveyed, released and quitclaimed contains fifty thousand (50,000) acres more or less and is bounded as follows, viz.: Beginning at a point three miles West by South from the building known as the Hacienda de Santa Rita, thence North six miles, eighteen chains and twenty-two links; thence East twelve miles, thirty-six chains and forty-four links; thence South six miles, eighteen chains and twenty-two links; thence West twelve miles, thirty-six chains and forty-four links to the beginning, which said Southern half, is part of said entire tract of 100,000 acres in the whole of which an interest was conveyed to the said John Ireland and Wilbur H. King by said deed to them from the said David W. Bouldin and as to the rest and residue of said entire tract being the upper or northern part thereof the said interest thus conveyed to the said parties of the first part still remains and stands good to them and is in no way affected or impaired by this conveyance and release of the other or Southern half or portion.” [197]

#### **Plaintiffs' Exhibit “Z.”**

Deed from John W. Cameron and Mrs. A. T. Belknap to Alex F. Mathews, dated September 22, 1893, acknowledged September 28, 1893, recorded October 12, 1893, in Pima County, Arizona, in words and figures following, to wit:

"This deed of assignment made this the 22d day of September, 1893, between John W. Cameron and Mrs. A. T. Belknap, both of Washington City, D. C., parties of the first part and Alex F. Mathews of Lewisburg, W. V., party of the second part:

Whereas, John C. Robinson, of Binghampton, New York, by deed dated December 1, 1892, and recorded in the office of the county recorded of Pima County, Arizona Territory, did convey to the said John W. Cameron, a certain tract of land in said county and territory, which is described as follows, viz.: :

That certain tract of land which is the Southern half of the tract of land known as Baca Float No. 3, containing one hundred thousand (100,000) acres, more or less, the said southern half thereby conveyed by said Robinson to said Cameron, containing fifty thousand (50,000) acres more or less, and bounded as follows, viz.: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita, running thence north six miles, eighteen chains and twenty-two links, thence east twelve miles, thirty-six chains and forty-four links, thence south six miles, eighteen chains and twenty-two links, thence west twelve miles, thirty-six chains and forty-four links, to the beginning, together with all the tenements and appurtenances thereunto belonging. And Whereas, by virtue of and as appears by a certain declaration of trust executed by the said John W. Cameron dated the 28th day of November, 1892, and recorded in the said office and especially by the 4th paragraph or section of the said declaration of trust, as the said John [198] W. Cameron in

his own right and individually and the said Mrs. A. T. Belknap are entitled to have and receive, and have paid them ten per cent of the money to be realized net by said Cameron from the sale of said land when sold by him, /and Whereas, as the said John W. Cameron and Mrs. A. T. Belknap have sold and desire now to assign and convey unto the said Alex F. Mathews all of our right, title and interest in and to the said land above described and to the net proceeds thereof by virtue of the said declaration of trust or otherwise. Now this deed witnesseth, that for and in consideration of the premises and in further consideration of the sum of ten (10) dollars to us in hand paid, receipt whereof is hereby acknowledged, we, the said John W. Cameron and A. T. Belknap, parties of the first part, do hereby grant, convey and assign to the said Alex F. Mathews, party of the second part, without any resource upon us whatever, all of our right, title and interest in and to said lands above described and to the net proceeds thereof, by virtue of the said declaration of trust or otherwise, and we do hereby authorize the said John W. Cameron to convey and grant the said above-described tract of land of fifty thousand (50,000) acres in Pima County, Arizona Territory, to the said Alex F. Mathews, free from any and all claims, demands and interest on our part therein, or in the net proceeds thereof, in and under the said declaration of trust deed in any manner, in any, or upon any ground whatsoever.

As witness the following signatures and seals:

A. T. BELKNAP. (Seal)

JOHN W. CAMERON. (Seal)

**Plaintiffs' Exhibit "AA."**

Deed from John W. Cameron to Alexander F. Mathews, dated Sept. 25, 1893, acknowledged Sept. 30, 1893, and recorded Oct. [199] 12, 1893, conveying

"that certain tract of land situated in Pima County in Arizona Territory which is the southern one-half of the tract of land known as Baca Float No. 3, containing one hundred thousand (100,000) acres more or less, which said southern half hereby conveyed contains fifty thousand (50,000) acres more or less and is bounded as follows, viz.: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita, thence North six miles, eighteen chains and twenty-two links; thence East twelve miles, thirty-six chains and forty-four links; thence South six miles, eighteen chains and twenty-two links; thence West twelve miles, thirty-six chains and forty-four links to the beginning."

**Plaintiffs' Exhibit "BB."**

Deed from Charles A. Eldredge to Alex. F. Mathews, dated September 22, 1893, acknowledged September 28, 1893, and recorded October 12, 1893, in Pima County, Arizona, in words and figures following, to wit:

"This deed of assignment made this 22d day of September, 1893, between Charles A. Eldredge of

Fond du Lac County, State of Wisconsin, party of the first part, and Alex. F. Mathews of Lewisburg, West Virginia, party of the second part.

Whereas, John C. Robinson of Binghampton, New York, by deed dated December 1st, 1892, and recorded in the office of the County Recorder of Pima County, Arizona Territory, did convey to John W. Cameron of Washington, D. C., a certain tract of land in said county and territory, which is described as follows, viz.: That certain tract of land which is the southern half of the tract of land known as Baca Float No. 3, containing one hundred [200] thousand acres more or less—the said southern half hereby conveyed by said Robinson to said Cameron containing fifty thousand (50,000) acres more or less, and is bounded as follows, viz.: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita, running thence north six miles, 18 chains and 22 links; thence east twelve miles, 26 chains and 44 links; thence west twelve miles, 36 chains and forty-four links to beginning, together with all the tenements and appurtenances thereto belonging; and whereas, by virtue of and as appears by a certain declaration of trust executed by the said John W. Cameron, dated the 28th day of November, 1892, and recorded in said office and especially by the fourth (4th) section or paragraph of said declaration of trust, fifteen (15%) per cent of the money to be realized net by the said Cameron from the sale of said lands is to be held by me for my benefit until a

settlement is made by me with one James Eldredge, and a certain contract between me and John C. Robinson with reference to my said interest is cancelled; and whereas, I have sold and desire now to assign and convey unto the said Alexr. F. Mathews, all my right, title and interest in and to the said lands above described and to the net proceeds thereof by virtue of the said declaration of trust, the said contract with John C. Robinson, or otherwise; and Whereas, the said settlement has been made between me and the said James Eldredge and the said contract between myself and said John C. Robinson has been cancelled and surrendered so that I am now entitled to recover and have paid to me the said fifteen (15%) per cent of the net proceeds of said land when sold by said Cameron.

Now this deed Witnesseth, that for and in consideration of the premises, and in further consideration of the sum of ten dollars (\$10) to me in hand paid the receipt whereof is hereby [201] acknowledged, I do hereby grant, convey and assign to the said Alexr. F. Mathews without any recourse whatever upon me, all of my right, title and interest in and to the said land above described, and to the net proceeds thereof by virtue of the said declaration of trust, the said contract with Robinson as aforesaid, or otherwise. And I do hereby authorize, empower and direct, so far as I am concerned and interested therein, the said John W. Cameron to convey and grant the said above-described tract of land of fifty thousand (50,000) acres in Pima County, Arizona Territory, to the said

Alexr. F. Mathews, free from any and all claims, demands and interest on my part therein, or in the net proceeds thereof, in and under the said declaration of trust or in any manner or upon any ground whatever.

As witness the following signature and seal.

CHAS. A. ELDREDGE.      (Seal)

**Plaintiff's Exhibit "CC"**

Deed from James Eldredge to Alex. F. Mathews, dated September 22, 1893, acknowledged September 30, 1893, and recorded Oct. 12, 1893, in Pima County, Arizona, in the same form and language, except as to the grantor, as Plaintiffs Exhibit "BB" and "U."

**Plaintiffs' Exhibit "DD."**

Plaintiffs then offered in evidence a declaration of trust executed by John W. Cameron, dated November 28, 1892, acknowledged December 8, 1892, and recorded December 20, 1892, in Pima County, Arizona, in words and figures following:

"Whereas, John C. Robinson, of Binghampton in the State of New York, proposed to and is about to convey to me by deed duly executed and acknowledged, the following described property, viz.: "That certain tract of land situate, lying and being [202] in the County of Pima, Arizona Territory, the same being the southern half of the tract of land known as Baca Float No. 3, containing (100,000) one hundred thousand acres more or less, the said southern one half thereof to be conveyed to me as aforesaid, containing (50,000) fifty thousand acres,

more or less, being the same conveyed in severalty to the said John C. Robinson, by deed of partition from Powhatan W. Bouldin and James E. Bouldin by D. W. Bouldin, their attorney in fact, all of Austin, Texas, and executed at Austin, Texas, and dated the (12) twelfth day of November, 1892, and which southern one half is bounded as follows:

Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita, running thence north six miles, eighteen chains and twenty-two links; running thence east twelve miles, 36 chains and 44 links; running thence south six miles, 18 chains and 22 links; running thence west twelve miles, 36 chains and 44 links, to the place of beginning, together with all rights and appurtenances thereunto belonging. Now, in consideration of the premises and of the said land to be conveyed to me, as aforesaid, I do hereby publish, declare and make known that I am to and will hold the said property to be conveyed to me as aforesaid, in manner and form following—that is to say:

1. With the absolute right on my part to sell the said property as a whole or in parcels, at such time or times, in such manner or manners and upon such term or terms as to me may seem best and proper, without any liability or responsibility whatever upon the purchaser or purchasers thereof, or of any part or parts of the said property to see to the application to be made by me of the purchase money therefor, or of any part thereof.

2. With like absolute right and authority on my part to [203] grant an option or options on said

property or any part or parts thereof, in such manner or manners, for such time or times, and upon such terms as to me may seem right and proper.

3. With like absolute right and authority on my part to borrow money upon the faith and credit of such property at such times, in such sums and upon such terms as to me may seem right and proper and to secure the payment of all sums of money thus borrowed by me by mortgages or deeds of trust upon said property, without any liability or responsibility upon the part of the party or parties advancing and lending such money to see to the application and use to be made of the same. 4. Of the money realized by me net from the sale of said land and when and as realized, I am to pay ten (10) per cent thereof to the said John C. Robinson, ten (10) per cent to be retained and divided equally 5% to each, to Mrs. A. T. Belknap and myself, John W. Cameron, both of Washington, D. C.; fifteen (15) per cent to be held by me until a settlement is made between James Eldredge and Charles A. Eldredge—at which settlement a certain paper or contract held by said Charles A. Eldredge is to be cancelled; \$250 for the payment of a note for that amount, held by the Broome County National Bank of New York, on which John C. Robinson is endorser and the balance to be paid to James Eldredge or as he may in writing direct. As witness the following signature and seal this the 28th day of November, 1892.

JNO. W. CAMERON. (Seal). [204]

**Plaintiffs' Exhibit "EE."**

Deed from Powhatan W. Bouldin and Lucy Bouldin, his wife, and James E. Bouldin, as parties of the first part to Alex. F. Mathews as party of the second part dated the 7th day of February, 1894, acknowledged March 28, 1894 and recorded September 15, 1894, reciting *inter alia*:

"Whereas the said parties of the first part, by D. W. Bouldin their attorney-in-fact, by deed dated November 12, 1892 and recorded in the office of the County Recorder of Pima County in the Territory of Arizona, on the 20th day of December, 1892, in Book 7, Deeds Real Estate, pages 668, 669, 670, did convey to John C. Robinson a certain tract of land in said county known and described fully and accurately in said deed and which is known as the lower or southern one-half of a tract of land known as Location No. 3, of the Baca Series in the Santa Rita Mountains in said territory and county and which one half thus conveyed contains fifty thousand acres (50,000) more or less; and whereas it was the purpose and object of said deed and the intention of said parties to convey the said land to the said Robinson free and unencumbered in any way and without its being subject or liable to any abatement or reduction in any way or for any cause or reason whatever so that the said Robinson by virtue of said deed should take, own, and hold the entire amount of land, about 50,000 acres, by said deed described and conveyed and included in the metes and bounds by said deed given; and whereas it has

been suggested that said deed is not entirely adequate and sufficient to accomplish said object and purposes, as above set forth, or may not be, inasmuch [205] as Belle Bouldin, the wife of one D. W. Bouldin, Sr., who claimed an interest in said lands, did not unite in said deed or in deeds from said D. W. Bouldin to the said Powhattan W. Bouldin and Jas. E. Bouldin for said land, and from D. W. Bouldin, Sr., to David W. Bouldin, Jr., and Powhattan W. Bouldin, the first dated August 23, 1892, and recorded in said county in Deeds of real estate, page 572, et seq. in book 23 and the second dated Oct. 16, 1888, and recorded in said county in book 21, Deeds of Real Estate, pp. 134-135, and inasmuch as there is some doubt whether it was competent for Lucy Bouldin, the wife of Powhattan W. Bouldin, to unite in and execute said deed to John C. Robinson by an attorney-in-fact so as to pass and convey to him any interest which she may have had in said land by virtue of her dower rights or otherwise." And conveying: "That certain tract of land situated in Pima County in Arizona Territory, which is the southern one-half of the tract of land known as Baca Float No. 3, containing one hundred thousand (100,000) acres, more or less, which said southern half hereby conveyed contains fifty thousand (50,000) acres, more or less and is bounded as follows, viz.: Beginning at a point three miles West by South from the building known as the Hacienda de Santa Rita, thence North six miles, eighteen chains and twenty-two links; thence East twelve miles, thirty-six chains and forty-four links; thence South six

miles eighteen chains twenty-two links; thence West twelve miles, thirty-six chains and forty-four links to the Beginning.” [206]

[**Testimony of George W. Atkinson, for Plaintiffs.]**

George W. Atkinson was called as witness on behalf of plaintiffs, and having been first duly sworn, was examined and testified as follows:

My name is George W. Atkinson. I am in possession of this property under the terms of a lease, the property known as Baca Float No. 3; the lease being from the plaintiffs Watts and Davis, and I was in possession at and before the commencement of this action under the lease. I think I went into possession on the 13th day of June, 1914, and the lease was made according to my recollection about the 14th of June.

Cross-examination.

(By Mr. BREVILLIER.)

WITNESS.—I have been in possession of some of this property for a great many years. Mr. Joseph E. Wise occupies now and occupied in January a large part of the property. Well, I will say that I occupied the grazing lands, not the bottom lands. I occupy such agricultural lands to which I previously filed homestead entries or got patents or assignments of homestead entries or patents—lands that I bought. I believe there is one piece of land that I bought since the lease; I have done some fencing, I think in September—last year. I did not do very much fencing. I fenced in probably eighty acres of land, that is, I put the posts around the eighty acres and wire fence around part

(Testimony of George W. Atkinson.)

of it. I think probably I put a wire fence around four or five acres and posts around the eighty acres. There is a distance of sixteen feet, I believe, between the posts. Wise has got one pasture on the Baca Float of about one thousand acres, known as the "Garden" [207] pasture. His biggest pasture is "Sinquitona." Probably he has got 4,000 acres in it and a small pasture of 1,000 absolutely. He is in absolute control of that because he has got it fenced. He also uses a lot of the other grazing land; he has got cattle running on them. I did not make any sublease to Mr. Wise. I did not tell him that he might occupy those lands as tenant with me. As a matter of fact I am using more of this property now than I did before the lease was given to me. I have changed and driven from one part of the range to the other something like eleven hundred head of cattle at two different drives; but I haven't fenced it in; I did not fence it, no sir, I did not. I have paid no money directly as rent under my lease; but I have done work for Watts and Davis which when we come to settle probably I will get credit for. I signed the injunction bond in case No. 5—the Wise injunction bond. That was not part of the work. I have done some fencing for Watts and Davis; that fence that I spoke of. The four or five acres of fence and the posts around eighty acres of land; when I come to pay my cattle bill I shall deduct the bill for my fence from it. I had a man living on it, too, for the last five months. As a matter of fact, I agreed to pay pasturage there the same as I pay the Government of the United States. That was

(Testimony of George W. Atkinson.)  
what I agreed to do.

Mr. Wise did not give his consent to my fencing that four or five acres. I didn't ask Mr. Wise's consent to do anything and I never did.

Hereupon plaintiffs rested their case. [208]

[Evidence Introduced by the Defendants, Joseph E.  
Wise and Lucia J. Wise.]

[Testimony of George J. Roskruge, for Defendants  
Wise.]

GEORGE J. ROSKRUGE was called as a witness on behalf of the defendants Wise and being first duly sworn, testified as follows:

My name is George J. Roskruge, age seventy years, place of residence Tucson, Arizona. My profession for many years has been county surveyor and Government surveyor. I have lived in Pima County, Arizona, over forty years, and I am living here now. I was county surveyor of Pima County in 1887. I was acquainted with Col. David W. Bouldin; I first met him in the summer of 1887 at Tucson. At that time he had a conversation with me in regard to surveying the Baca Float. I made a survey of Baca Float No. 3 in August and September, I think, of 1887. I went out to the ground itself in 1887 with David W. Bouldin. I was on the ground with him three or four times. He was with me when I started the survey and again with me before I finished. I knew Morgan R. Wise. I remember going on the Float and seeing him. Mr. Bouldin was with me when I went to the old Hacienda; the starting point called for in the papers that

(Testimony of George J. Roskruge.)

Mr. Bouldin had, and Mr. Morgan R. Wise was living there at that time, was living there at the Hacienda.

Question.—What was the full name of it, Hacienda, or did it have any further name?

A. Hacienda de—I forget now the name of it, but it is supposed to be the initial point of the grant.

Mr. KINGAN, Counsel for Plaintiffs.—If the Court please, the plaintiffs desire to make the further objection to the evidence of Mr. Roskruge in that it is irrelevant, immaterial [209] and incompetent and inadmissible for any purpose for the reason that there is but one Baca Float No. 3.

The Court thereupon ruled that the evidence will be received subject to plaintiffs' objection.

Counsel for plaintiffs thereupon duly excepted to the ruling of the Court.

The witness then continued as follows:

I recall the name of the initial point of the Baca Float No. 3 which I surveyed for Mr. Bouldin. It is "Hacienda de Santa Rita." Mr. Bouldin and myself went to the Hacienda de Santa Rita the latter end of August, 1887, and there we met Mr. Morgan R. Wise, who was living there at the time—he was living at the Hacienda de Santa Rita, and told him what we were going to do. I ascertained first whether the old Hacienda was really the Hacienda de Santa Rita, which I found to be correct, and I asked Mr. Wise, I told him that I had come there as county surveyor to make a survey of that ground for Colonel Bouldin as Baca Grant No. 3. He admitted that was the place where he was living, that

(Testimony of George J. Roskruge.)

that was the Hacienda de Santa Rita, and I started from there and ran to the southeast corner as called for in the paper that was given me by Colonel Bouldin, and there I established a monument, and Colonel Bouldin was with me and some other party, I don't remember who now, of course my man, and I don't know whether Mr. Wise accompanied me or not, but there was some one there outside of my party present at the time. We erected the monument and Colonel Bouldin took up a handful of dirt, I know, and threw it to the north and south, east and west, and said that was taking possession, that is the way the Mexicans took possession of their land grants. I remember that. Then from there I ran east the twelve miles and some [210] odd chains, monumenting as I went; putting up monuments all along the line where they could be seen one from the other, so if it was ever fenced there would be no trouble in fencing it, and there I ran to the northeast corner above Greaterville and there Mr. Bouldin met me again, and I showed him where the corner was there where I put in a post. At the four corners of the Grant I established a corner, and between I put in monuments all along the line where they could be seen looking forward and back-sight, so in fencing there would be no trouble. I made a map of my survey about that time. I made the map when I came back and put it on record. Colonel Bouldin wanted to have it put on record because he said the county surveyor was the next authority after the Government. He

(Testimony of George J. Roskruge.)

couldn't have it surveyed by the Government and he wanted it surveyed by the county surveyor and put on record.

Mr. NOBLE, Counsel for Plaintiffs.—I move what Colonel Bouldin said be stricken out.

The COURT.—What Colonel Bouldin said about the force and validity of the map or the effect it might have and the authority of the county surveyor is stricken out.

To which ruling of the Court the defendants Wise then and there duly excepted.

WITNESS.—(Continued.) I have a copy of the map which I then made. Witness (producing paper) said: "This is the copy of the map that I made of that survey; this is a blue-print of the original."

#### **Defendants Wise Exhibit 1.**

Defendants Wise offered in evidence the said blue-print copy of the original map of survey made by the witness Roskruge, which showed Baca Float No. 3 marked according to the courses and distances of the 1866 location, and the same was received [211] in evidence by the Court, subject to plaintiffs' objection.

The original "Defendants Wise Exhibit 1" is not inserted here, but under order of the District Court the same has been ordered to be transmitted to the Circuit Court of Appeals as a part of the record in this case, and reference to this original map "Defendants Wise Exhibit 1" is hereby made. A photo-

graphic copy of said exhibit is as follows:

[CLERK'S NOTE: Photographic copy omitted from Transcript.] [212]

**Defendants Wise Exhibit 2.**

Defendants Wise offered in evidence duly authenticated copy from the records of the County Engineer of Pima County, Arizona, the successor in office of the County Surveyor, (the office of County Surveyor being recently abolished), of the map of Baca Float No. 3, as surveyed by Mr. Roskruge in 1887.

Plaintiffs objected on the ground that it was not a public record, that Mr. Roskruge did not make his survey as a public official.

The COURT.—The paper is admitted subject to plaintiffs' objections and with permission to plaintiffs to renew their objections later. The paper was then marked "Defendants Wise Exhibit 2" and is in words and form as follows, to wit: [213]



Pima County, Arizona

ton & men  
r. W cor.

West 12 miles 36 chs 44 links

Post m.  
N.E.

Greelyville

South 12 miles 36 chs 44 links

Gardiner

Baca Float N<sup>o</sup> 3

Containing 99 289 39 Acres

North 12 miles 36 chs 544 links

$378 \frac{1}{4} N$   $\square \square$  Hacienda del Santa Rita  
3 miles

ton & men  
r. W cor.

East 12 miles 36 chs 44 links

Post  
S.E.

Magnetic Variation  $12^{\circ}30' E$

Survey commenced 26<sup>th</sup> August 1887

" Completed 9<sup>th</sup> Sept<sup>th</sup> 1887

George J Roskruge  
County Surveyor



(Testimony of George J. Roskruge.)

WITNESS.—Looking south from this courthouse a distance of about forty-five miles you see a peak something over 9,000 feet high in the Santa Rita mountains; I know the name of that peak; its name is Mt. Wrightson or Old Baldy; that mountain is platted upon the map that I made, being "Defendants Wise Exhibit 1," as Mt. Wrightson. I am acquainted with the Greaterville placers; they are on the eastern slope of the Santa Rita mountains; they are partially within the limits of this Baca Float No. 3 which I surveyed and they are shown upon that map (Defendants Wise Exhibit 1). Now, in regard to this location Baca Float No. 3 that I surveyed, it takes in both slopes of the Santa Rita mountains, it takes in very little but mountains or foothills.

I made a map of Pima County. I was employed making it in 1890–1891–2–3. I do not know of any other map of Pima County that has ever been made by any person other than the one made by me; there might have been one made by Mr. Simpson before I came in but I have never seen any copies of it. (Counsel then exhibited to the witness a map which purported to be a map of Pima County.) The map which you show me is a photograph of the map made by me in 1893—the map that I made for the supervisors of this county; this is the official map of the county, made so by the board of supervisors and so stated upon the map itself.

Question. Will you state whether or not there is

(Testimony of George J. Roskruge.)

marked upon that map the so-called Baca Float No. 3?

A. That is Baca Float No. 3 (indicating) and the lines are marked on this map.

Q. Does that take in these portions of the Santa Rita mountains?

A. Yes, sir; covering the Santa Rita mountains.

Q. Is that the same Baca Float No. 3 that you surveyed in 1887?     A. Yes, sir.     [215]

### **Defendants Wise Exhibit 3.**

Defendants Wise offered in evidence the map so shown and testified to by the witness which showed Baca Float No. 3 according to the courses and distances of the 1866 location; to which offer plaintiffs made the same objection that they had made to the testimony of the witness.

The Court received the said map in evidence subject to the objections of plaintiffs and the map was marked by the clerk "Defendants Wise Exhibit 3."

The original "Defendants Wise Exhibit 3" is not inserted here, but under order of the District Court the same has been ordered to be transmitted to the Circuit Court of Appeals as a part of the record in this case, and reference to this original map "Defendants Wise Exhibit 3" is hereby made.

**WITNESS.**—I will describe generally the kind of monuments that I erected on each of the four corners of Baca Float No. 3 that I surveyed in 1887, which were erected by me at that time: The Southwest corner was a large monument of stone and the Northwest corner was a large monument of stone,

and the Southeast corner and Northeast corner—they were posts put in surrounded by stone and dirt and along the whole line there were monuments placed as I said before, so that the lines could be easily traced.

#### Defendants Wise Exhibit 4.

Defendants Wise then offered in evidence certified copy of the petition of Sykes and Curry to the United States Surveyor General, filed December 15, 1879, asking for the survey and recommendation that they obtain patent title to the Calabasas and Tumacacari grant. And counsel stated that his object in making this offer, which would be followed by the offer of a map of the Tumacacari Grant, was to show to the court that the lands which are now known as Baca Float No. 3, or 1863 location, [216] were in those early days known as the Calabasas Grant, and the Tumacacari Grant.

Mr. HEATH.—We object to the admission of this evidence. These grants have been declared void—not to affect this grant. The fact that this grant which is a valid grant, was overlapped by certain void grants certainly has no tendency to prove that the land was not Baca Float No. 3.

The COURT.—I will admit it subject to this objection.

Said paper is as follows: [217]  
To the Hon. John Wasson,

U. S. Surveyor General for Arizona,  
The petition of John Curry and Charles P. Sykes,  
respectfully represents:

That they are the owners under various mesne conveyances, from the original grantees and de-nouncers of a certain tract of land or rancho, situated in the County of Pima, in the Territory of Arizona, known by the name of "Tumaccacori and las Calabazas" a particular description of the location and boundaries of which tract of land or rancho, is clearly and explicitly given in the original expediente of the title, a duly authenticated copy of which is hereto annexed, marked exhibit "A," with a correct translation thereof, marked exhibit "B," and which are made a part of this petition.

Your petitioners further represent, that the original title papers set forth the following historic facts:

1st. That in the year 1908, Juan Legarra, Governor of the Indian Pueblo of Tumacacori, situated in the jurisdiction of "Primaria Alta," petitioned Don Alejo Garcia Conde, Intendente of the Province and of the Royal Treasury, Political and Military Governor and Juez Privativo, to issue to the Indians of the Pueblo of Tumaccacori a grant for the "Fundo Legal" of the Pueblo and also for the "Estancia" (stock farm) of the Pueblo, the grant asked for to replace the ancient title papers, which had been given by the Spanish government to the Indians of said Pueblo, and which had been lost or destroyed.

That the petition was made to the Intendente in accordance with the Royal Instructions of the fifteenth (15th) day of October, 1754, and Article 81 of the Royal Ordinances and Instructions in rela-

tion to "Intendententes" of the Fourth (4th) day of December, 1786.

2d. That in accordance with said petition, the lands [218] petitioned for were ordered by the "Intendente" to be surveyed by the proper officer, and that on the fourteenth (14th) day of January, 1807, the said lands were surveyed and the boundary monuments established by Don Manuel de Leon, Commandante of the Presidio of Tubac.

3d. That on the second (2) day of April, 1807, the said Don Alejo Garcia Conde, Intendente &c, issued a Royal Patent on Title, under the laws referred to, to the Indians of the Pueblo of Tumaccacori for the lands, as, clearly and fully described in the proceedings in relation to the survey thereof; which proceedings are set out at length in the copy of the original expediente, marked exhibit "A," and which original title or patent, was duly registered in Book No. 174, existing in the "Juzgado Privativo."

4th. That under the laws of the Mexican Congress of the tenth (10th) of February, 1842, providing for the denouncement and sale of abandoned Pueblos, Don Francisco Aguilar, on the eighteenth (18th) day of April, 1844, became the owner, by purchase for the sum of (\$500.00) Five Hundred Dollars, of the four square leagues of agricultural and grazing lands, of the "fundo legal" and of the abandoned Pueblo of Tumaccacori, and the —— sitios of the estancia (stock farm) of Calabazas and the other places thereunto pertaining, the areas, boundaries, monuments and calindantes of which

are set forth in the corresponding proceedings of measurement made in the year 1807 by the Commissioner and Surveyor Don Manuel de Leon.

That the original proceedings of denouncement and sale to the said Aguilar are set forth at length in the original "Expediente" hereinbefore referred to, a copy of which is marked exhibit "B"; a registry of the sale and denouncement being made in the corresponding book. [219]

5th. That on the second (2d) day of March, 1869, Don Francisco A. Aguilar, by deed of conveyance, duly executed in the City of Guaymas de Zargoza, sold the lands purchased by him under denouncement as aforesaid to Don Manuel Ma. Gandara, which deed of conveyance, is fully set out in the original "Expediente" referred to and registered on folios 2 and 3 of the respective book.

6th. That on the twenty-fourth (24th) day of July, 1877, the said Don Manuel Ma. Gandara, of the State of Sonora, Republic of Mexico, sold and conveyed the premises hereinbefore described, to your petitioners John Curry and Charles P. Sykes, who are citizens of the State of California, as is shown by deed of conveyance executed to them by Don Manuel Ma. Gandara, bearing date July 24, 1877, which is hereto annexed, marked exhibit "C."

And your petitioners aver further that the ancient grant of the Rancho of Tumaccacori and las Calabazas, is referred to and called for in the records of coterminus grants, and also that it is referred to in the book of "Toma de Razon" of grants now existing in and forms a part of the ancient archives of the

Mexican State of Sonora, and of the ancient intendencia of the Spanish province of the same name. And further, that the bona fides of said title papers can be established, if required, by the testimony of expert witnesses, who are familiar with the laws, usages and customs of Mexico in relation to the granting of lands, and also acquainted with the handwriting of the Spanish and Mexican officials of that country during the time covered by these title papers.

Your petitioners further allege that the premises referred to were in actual and useful possession and occupation, by the original grantees for many years and so continued until when from inevitable causes they became deserted, and under the laws denounceable; whereupon the lands now claimed by your petitioners [220] were denounced and purchased by Don Francisco A. Aguilar, and that they have been owned and possessed by the said Aguilar and his successors from the date of said denouncement down to the present time; and that the possession thereof, during this time has been continuous, save when unavoidably interrupted by the hostility of the neighboring savages. And that your petitioners, under their purchase aforesaid, are not in possession and useful occupation of the said lands, having expended large sums of money in the development and improvement thereof.

In view of the foregoing, your petitioners claim that their title to the lands as described is absolute and indefeasible under the laws of Spain and Mexico; that it would be so held and regarded by

the law of all civilized nations; and that it is guaranteed by the treaty stipulations between the Governments of the United States and Mexico, bearing date December 30, 1873.

They therefore claim a confirmation by the proper Tribunals of the Government of the United States of the title to all the lands as described in the original title papers, to which reference is made for a particular description of location and boundaries, asking that the whole of said original title papers be considered as a part of this their petition.

And they will ever pray, etc.

JOHN CURRY.

C. P. SYKES.

San Francisco, Cal., December 15th, 1879. [221]

#### **Defendants Wise Exhibit 5.**

Defendants Wise offered in evidence a copy of a blue-print map made in 1880 of the Tumacacari and Calabasas Grants, duly certified to by the Surveyor General of Arizona, showing the Tumacacari and Calabasas Grants as shown in the Contzen survey.

Mr. Kingan objected to the introduction in evidence thereof on the ground that it is absolutely immaterial, and that they were proceeding upon the theory, as the Court said, that it should be admitted subject to plaintiffs' objections.

The Court permitted said instrument to be introduced in evidence subject to the objection of plaintiffs.

Paper marked by the clerk "Defendants Wise Exhibit 5."

The original "Defendants Wise Exhibit 5" is not

inserted here, but under order of the District Court the same has been ordered to be transmitted to the Circuit Court of Appeals as a part of the record in this case, and reference to this original map "Defendants Wise Exhibit 5" is hereby made.

**Defendants Wise Exhibit 6.**

Defendants Wise offered in evidence a map of Baca Float No. 3 as surveyed by Mr. Roskruge, that was filed in the office of the Surveyor General of the United States showing Baca Float No. 3 according to the courses and distances of the 1866 location.

The COURT.—It may be received subject to plaintiffs' objections.

Paper marked by the clerk "Defendants Wise Exhibit 6."

The original "Defendants Wise Exhibit 6" is not inserted here, but under order of the District Court the same has been ordered to be transmitted to the Circuit Court of Appeals as a part of the record in this case, and reference to this original map "Defendants Wise Exhibit 5" is hereby made. [222]

**WITNESS.**—I first heard of Baca Float No. 3 some time in the early 70's when I was in the Surveyor General's office; that was in 1870; from that time up to the year 1899 Baca Float No. 3 was always supposed to be in the Santa Rita Mountains. I never heard of it located anywhere but in that district.

Question. Now, speaking specifically with reference to the land that you surveyed, where was Baca Float No. 3 with reference to the land that you surveyed for Mr. Bouldin up to 1899. Do you understand my question?

A. I understand. Well, it is about where I surveyed, always supposed to be there.

In 1887 or prior to that time I knew a Mexican grant called the Calabasas Grant and also the Tumacacari Grant. I knew where they were situated. I made a map of those grants. My attention is called to the blue-print map which is marked "Defendants Wise Exhibit 5," purporting to be a map of Calabasas and Tumacacari Grants; I made the original of that map.

The COURT.—All this is admitted, all of this witness' [223] testimony is admitted subject to the objection of plaintiffs.

WITNESS.—(Continuing.) That map referred to was made in 1880; The Surveyor General's signature is on that map. At that time I knew about where the Calabasas Grant was and where the Tumacacari Grant was; the lands which were included within this survey were not at any time prior to the year 1899 known by the name of "Baca Float No. 3." The names of those lands included within the limits shown on this map (Defendants Wise Exhibit 5) as Calabasas and Tumacacari Grants were known as Calabasas and Tumacacari Land Grants, and they were in the valley of the Santa Cruz.

No cross-examination.

Thereupon Mr. Noble, counsel for plaintiffs, moved the Court to strike out all the testimony of the witness George J. Roskruge taken subject to the objection of plaintiffs on the grounds stated in the various objections, and the Court then stated that the ruling on this motion would be reserved until the close of defendants testimony.

**Testimony of John E. Magee.**

JOHN E. MAGEE was called as a witness on behalf of the defendants Wise and having been first duly sworn, was examined and testified as follows:

WITNESS.—My name is John E. Magee; age 75; at the present time I am Secretary of the Arizona Pioneers' Historical Society. I live in Tucson, Pima County, Arizona, and have lived here for forty years and six months. I first came to Pima County in December, 1874. I am acquainted with the so-called Baca Float No. 3, which took in Mt. Wrightson and which commenced from the Hacienda de Santa Rita, commonly known as the 1866 [224] location. I was on it for about fifteen years and off and on since. I landed on what is called the Salero Mine, December 31, 1874, at nine o'clock at night; the Salero Mine is within the bounds of that amended location of Baca Float. I came to this country under the employ of the Sonora Mining & Exploration Company which purported to hold the title to the amended location of Baca Float No. 3. I came here to take charge of and look after that title and have it surveyed. After I had looked around I went to the Surveyor General's who was then John Wasson, described to him the land, the amended location as I understood it by my diagrams I brought with me and asked for a survey of that land. He point blank refused to survey it on the ground that it was known to be mineral for one hundred years, showed mineral on its surface from one end to the other, and took down a book, I think, of the laws of the United States of 1856 or '60.

(Testimony of John E. Magee.)

Mr. NOBLE.—We object to all this line of testimony on the ground that it is immaterial, incompetent and irrelevant.

The COURT.—I think we will save time by admitting it subject to the plaintiff's objection.

Mr. FRANKLIN.—Mr. Magee, please state what you did in regard to finding out or ascertaining where the '66 location was upon the ground.

WITNESS.—I had in my possession a diagram made by Rafael Pompelly who was a metallurgist at the Hacienda de Santa Rita when this Baca Float—or amended location, was made, showing the relative position of the original location and the relative position of the amended location. I did not know where the monuments were myself. I had to find them as best I could. Mr. John T. Smith, who helped to carry the chain in surveying, Alphonse Rickman of Tubac, who was present at different [225] times and saw some of the monuments, told me where the monuments were; the monuments of the original location, and the commencement of the amended location and one or two monuments on that. Speaking generally, I knew what country was included in the amended location; it covered the Santa Rita Mountains from a short ways south of the Salero Mine up to the Santa Rita peak and maybe beyond; I couldn't say positively. The Santa Rita peak is generally known by the name of Mt. Wrightson, Old Baldy, and also Santa Rita peak; that peak was within the limits of the '66 location as I then discovered.

(Testimony of John E. Magee.)

The Hacienda de Santa Rita was at that time a well-known point; it was established by the Wrightsons and Raphael I. Pompelly. It was a new building put up for housing the officers and some of the men who were working there on the mines, and they called it, as they do all Spanish residences, Hacienda, and gave it the name of Santa Rita, I presume, I don't know, from the mountains. I have known the Hacienda de Santa Rita forty years and some months. Some of the buildings are there; the ruins are there.

I was acquainted with a gentleman by the name of Christopher E. Hawley. I met him there in Tucson in March, 1875, if I am right, I think so. I went out with Mr. Hawley to the Hacienda de Santa Rita. He did not make any statement to me in regard to the Baca Float, or, at least, Baca Float No. 3, '66 location at that time. He told me that he was interested, or would be interested in Baca Float No. 3 and would like to see the country. I showed him where Baca Float No. 3 was at that time; I showed him what I took and learned to be the amended location of Baca Float No. 3, covering the Santa Rita Mountains, as described a little while ago.

Mr. FRANKLIN.—At this point your Honor, I would like [226] to show the Court a photograph of the Hacienda de Santa Rita contained in a book written by J. Ross Brown. The Court takes judicial notice of History. I will state, your Honor, that my only object in introducing whatever may be pertinent in that book, or calling attention to it, is to show that the Hacienda de Santa Rita was a well-

known and established point. That refers to it before it was destroyed. The history shows it was destroyed by the Indians I think in '63, partially destroyed and it has been rebuilt and occupied ever since.

The COURT.—It may be admitted for the purpose for which it is offered.

#### **Defendants Wise Exhibit 7.**

Defendants Wise then offered in evidence a duly certified copy of the record in Pima County of a power of attorney from Christopher E. Hawley to John E. Magee, acknowledged before Charles Myer, Justice of the Peace in Pima County, executed in May, 1875, for the purpose of showing that Mr. Hawley was here in Tucson at that time.

The COURT.—It shows that he was here at that time. Is that simply for the purpose of corroborating witness's statement?

Mr. FRANKLIN.—Yes, your Honor, that he was here at that time.

Plaintiffs objected to the introduction in evidence of said instrument on the ground that it is not germane to any of the issues of this case, and does not seem to have any reference whatever to Baca Float No. 3.

The Court ordered that said instrument be received in evidence subject to plaintiffs' objection.

Paper marked "Defendants Wise Exhibit 7," and is as follows: [227]

KNOW ALL MEN BY THESE PRESENTS:  
That I, CHRISTOPHER E. HAWLEY, now resi-

dent of Tucson, Arizona Territory, by virtue of the power and authority to me given in and by the power of attorney of Cyrus Strong, Tracy R. Morgan, Job W. Congdon and John Evans all of the city of Binghampton, Broome County, State of New York, bearing date of the 15th day of March, A. D. 1875, and recorded in the office of the County Recorder of the County of Pima, Arizona Territory, on the 4th day of May, A. D. 1875, in Book one of Miscl. Records, pages 317 and 318, authorizing me to locate, perfect and dispose of mining claims in Arizona, to sell, dispose and generally manage the same and empowering me generally to do business for them in Arizona and Sonora, with full power of substitution and revocation, do substitute and appoint John E. Magee of Tucson, said Territory, as special attorney in fact and for the sole purpose to abandon old mining claims and locations of mines hitherto made in the Santa Rita Mountains, about seventy miles south of Tucson, in the name of my said principals for the purpose of relocating the same correctly and in conformity with the United States laws and the mining law of the Truman District in said Pima County and Territory for the benefit of and in the name of my said principals, to do, perform and execute every act in the premises of abandoning said claims, relocating, correcting locations, recording said claims in said Santa Rita Mountains, the same as I might or could do under and by virtue of said power of attorney as well for me as being the true and lawful attorney and substitute of the said parties of said Binghampton, for the special purposes specified, hereby ratifying and

confirming all that the said attorney and substitute hereby made and appointed shall do in the premises by virtue hereof and of the said power of attorney and as specially limited herein. [228]

IN WITNESS WHEREOF I have hereunto set my hand and seal the fourth day of May, 1875.

CHRISTOPHER E. HAWLEY. [Seal]

Signed, sealed and delivered in the presence of  
CHARLES H. MEYERS.

Territory of Arizona.

County of Pima,—ss.

On this 4th day of May, A. D., 1875, before me, the undersigned, a Justice of the Peace in and for the above county and territory, duly sworn and commissioned, personally came Christopher E. Hawley to me well known as the person who executed the foregoing instrument as a party thereto and acknowledged that he executed the same freely, voluntarily and for the purposes therein set forth.

Witness my official signature the day and year first above written, at Tucson, Arizona Territory.

CHARLES H. MEYERS,  
Justice of the Peace, Pima County.

Filed and recorded at request of C. E. Hawley, at 3 o'clock P. M., May 4th, A. D. 1875.

S. W. CARPENTER,  
Recorder. [229]

WITNESS.—I had a diagram showing where the monuments of the original location were, but they were not specific, and I called upon these gentlemen because one of them purported to have carried the chain by which it was surveyed primarily and the

(Testimony of John E. Magee.)

other man, Mr. Alphonse Rickman said he knew of it. They showed me some of the monuments. The amended location did not include the Calabasas and Tumacacari Grants. I couldn't answer in regard to the original location because I paid no attention to it. I came here to take charge of the amended location and of course had nothing to do with the other, not officially.

Cross-examination.

(By Mr. KINGAN.)

WITNESS.—I do most surely know from a map made by the Government of the United States on file in L. H. Manning's, the Surveyor General's, office, at the time I was to have a hearing over there, that the amended location of '66 was practically turned over from the south—from the original location of '63, practically turned over to the north; so I knew where the '63 location was.

Mr. NOBLE.—Your Honor, we make *pro forma* the same motion.

The COURT.—You may renew your motion at the end of the defendants' case, or at the end of the trial.

**Defendants Wise Exhibit 8.**

Defendants Wise introduced in evidence without objection a duly exemplified copy of a deed dated and acknowledged December 1, 1892, and recorded December 20, 1892, from John C. Robinson to John W. Cameron, said deed being as follows: [230]

THIS INDENTURE, made this first day of December, A. D., 1892, between John C. Robinson, of Binghamton, New York, party of the first part, and

John W. Cameron, of Washington, D. C., party of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of one dollar in hand paid to the said party of the first part by the said party of the second part, receipt of which is hereby acknowledged, and in consideration of certain uses and purposes set forth in a declaration of trust made by the said party of the first part, and dated November 28, 1892, doth hereby grant, convey and confirm to the said party of the second part, his heirs, and assigns forever, all his right, title and interest in and to that certain tract of land, situate, lying and being in the County of Pima, Arizona Territory, the same being the southern half of the tract of land known as Baca Float No. 3; containing 100,000 acres more or less, the said southern half of said tract of land having been conveyed to the said party of the first part by deed of partition from Powhattan W. Bouldin and James E. Bouldin, by their attorney in fact D. W. Bouldin, all of Austin, Texas, executed at Austin, Texas, and dated the twelfth day of November, A. D. 1892, bounded and described as follows, viz.: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita, running thence north six miles, eighteen chains and twenty-two links, running thence east twelve miles, thirty-six chains and forty-four links; running thence south six miles, 18 chains and 22 links; running thence west twelve miles, 36 chains and 44 links to the place of beginning, together with all and singular

the tenements and appurtenances thereunto belonging and also all the estate, right, title and interest, property, possession, claim and [231] demand whatsoever, as well in law as in equity of the party of the first part, in and to the above-described premises and every part and parcel thereof. To Have and to Hold said claims and rights and all and singular the above mentioned and described premises unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof the said party has hereunto set his hand and seal on the day and year first above written.

JNO. C. ROBINSON. [Seal]

State of New York,  
County of Broome,—ss.

On this 1st day of December, 1892, before me personally came John C. Robinson, who signed the above instrument and who acknowledged the execution of the same.

[Seal]

D. L. BROWNSON,  
Notary Public.

Filed and recorded request of Wells Fargo & Co.  
December 20th, A. D. 1892, at 10 o'clock A. M.

CHAS. A. SHIBELL,  
County Recorder. [232]

Defendants Wise offered in evidence certain deeds and certain copies of records of deeds from alleged descendants of Antonio Baca, the alleged son of Luis Maria Baca, executed to Marcos C. de Baca, as hereinafter set forth. Plaintiffs, defendants Bouldin

and defendant Santa Cruz Development Company, objected to the introduction of each and all of said deeds, on the ground that the defendants Wise claim under the deeds of May 1, 1864, Plaintiffs' Exhibit "C," and of May 30, 1871, Plaintiffs' Exhibit "O," and they are bound by the recitals contained in these deeds as to who the heirs of Luis Maria Baca are.

The objection was overruled by the Court and exceptions allowed to the plaintiffs, defendants Bouldin and Santa Cruz Development Company.

The deeds so offered in evidence and so introduced in evidence over the objections and exceptions as aforesaid, are as follows:

#### **Defendants Wise Exhibit 9.**

Deed from Juana L. Baca widow of Jose Baca, Preciliiana Baca, Esteban Baca, Francisco Baca, Luciana Baca, Pilar Baca, and Inez Lucero, daughter of Epigmenia Baca, deceased, to Marcos C. de Baca, dated and acknowledged August [233] 20, 1913, and recorded August 29, 1913, which without the statement of parties and consideration, the *habendum*, signatures and certificates of acknowledgment and record, reads as follows, after describing and conveying the 1863 location by correct metes and bounds:

"Being the same premises that descended to the parties of the first part as the widow and children of Jose Baca, who was the son of Juan Manuel Baca who was the son of Antonio Baca, who was the son of Luis Maria Baca and one of the heirs to whom said grant was made by the

Act of Congress of the United States of America on the 21st day of June, 1860."

**Defendants Wise Exhibit 10.**

Deed from Guadalupe Mares de Sandoval, Meliton Mares, Eulogio Mares, Eutimio Mares, Higinio Mares and Pablo Mares, children and heirs of Preciliana Baca de Mares and her husband Antonio Mares, both deceased, to Marcos C. de Baca, dated and acknowledged August 27, 1913, and recorded September 15, 1913, which without the statement of parties and of consideration, *habendum*, signatures, certificates of acknowledgments and of record, reads as follows, after describing Baca Float No. 3 by the metes and bounds of the 1863 location:

"Being the same premises that descended to the parties of the first part hereto as children of Preciliana Baca, who was the daughter of Juan Manuel Baca, who was the son of Antonio Baca, who was the son of Luis Maria Baca, and one of the heirs to whom said grant was made on the 21st day of June, 1860, by an Act of Congress of the United States."

**Defendants Wise Exhibit 11.**

Deed from Martin M. Baca, widow of Ignacio Baca, Guillermo Baca and Eloisa Baca, children of Ignacio Baca, deceased, to Marcos C. de Baca, dated and acknowledged the 21st day of August 1913, and recorded August 29, 1913, which without the statement of parties and consideration, *habendum*, signatures and certificates of acknowledgment and record, [234] reads as follows, after describing Baca

Float No. 3 by the metes and bounds of the 1863 location:

“Being the same premises that descended to the parties of the first part as widow and children of Ignacio Baca, who was a son of Jose Baca, who was a son of Juan Manuel Baca, who was a son of Antonio Baca who was the son of Luis Maria Baca and one of the heirs to whom said grant was made by the Act of Congress of the United States of America on the 21st day of June 1860.”

### **Defendants Wise Exhibit 12.**

Deeds from Vidal N. de Mares, widow of Ines Mares, Vitalia Mares, Santiago Mares, Victor Mares, Adela Mares, Fermina Mares, Ramon Mares and Andres Mares, children of said Vidal N. Mares and Ines Mares, deceased, to Marcos C. de Baca, dated August 30, 1913, acknowledged September 2, 1913, and recorded September 15, 1913, which, without the statement of parties and consideration, *habendum*, signatures and certificates of acknowledgment and record, reads as follows, after describing Baca Float No. 3 by the metes and bounds of the 1863 location:

“Being the same premises that descended to the parties of the first part hereto as the widow of Inez Mares, deceased, and his children being a son and grandchildren of Preciliana Baca, who was the daughter of Juan Manuel Baca, who was a son of Antonio Baca, who was a son of Luis Maria Baca, and one of the heirs to whom said grant was made on the 21st day of

June, 1860, by an Act of Congress of the United States."

**Defendants Wise Exhibit 13.**

Deed Marcos C. de Baca and Francisco C. de Baca his wife, to Joseph E. Wise and Jesse H. Wise, dated and acknowledged the 17th day of September 1913, and recorded October 14, 1913, which, without the statement of parties and consideration, *habendum*, signatures and certificates of acknowledgment and record, reads as follows after describing Baca Float No. 3 by the metes and bounds of the 1863 location: [235]

"Being the same premises purchased by the said parties of the first part from the heirs and children of Jose Baca and Preciliana Baca, who were the children of Juan Manuel Baca, who was a son of Antonio Baca who was a son of Luis Maria Cabeza de Baca, and one of the heirs to whom said grant was made on the 21st day of June, 1860, by an Act of Congress of the United States, as said interest appears by quitclaim deeds duly executed by said heirs to the said party of the first part, reference to which is hereby made."

**Defendants Wise Exhibit 14.**

Defendant Joseph E. Wise then offered in evidence a paper in the words and figures following, the nature of the case requiring that it be printed in full:

"THIS INDENTURE, made the fourteenth day of January A. D. One thousand eight hundred and seventy-eight, between the parties whose names are

subscribed to this instrument of writing as parties of the first part, of the State of California, and D. W. Bouldin, of the State of Missouri, party of the second part, WITNESSETH: That the parties of the first part for and in consideration of the sum of One dollar to each and every one of them in hand paid by the said Bouldin party of the second part, and before the ensealing and delivery of these presents, the receipt whereof is hereby, by each and every one of them respectively acknowledged, and the further consideration, as hereinafter expressed, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said D. W. Bouldin, party of the second part, and to his heirs and assigns forever, all the undivided two-thirds of all our right, title and interest of, in and to the follwing described tract or parcel of land, to wit: Being situated lying and being about twenty-five (25) leagues from the City of Santa Fe in the State or Territory of New Mexico (whichever it may be at this time) and was called or was known and may be now known as the Rancho 'Las Vegas' and granted to Luis Maria Baca for a more perfect description of which reference is hereby made, especially to the description made in said Grant, the petition or papers in connection therewith. Together with the undivided two thirds of any lands that may have been or may be granted by the United States Government to Luis Maria Baca, or his heirs, in lieu of the 'Las Vegas,' Grant or otherwise, it being understood by us, at this time, that the Congress of the United States by special Acts have granted other

lands in lieu of the said 'Las Vegas' grant, divided into five (5) different parts or parcels, and described as follows, the same being in accordance with the description as taken from the Surveyor General's office at Santa Fe, New Mexico, to wit: Location No. 1. The  $\frac{1}{4}$  Section, Corner, two miles and a half west of township corner to township 19 and 20 N. of base line, Ranges 4 and 5 east of New Mexico principal [236] meridian, as a center point to the tract of said Baca the boundaries of which lying on the four cardinal points: the tract containing 99,289-39/100 acres. This selection being thus made in conformity to law and instructions. Location No. 2, made under the 6th section of an act of Congress approved June 21st, 1860, situate on the Canadian or Red River in the Territory of New Mexico, and described as follows, to wit: beginning at the corner of sections 21, 22, 27 and 28, in Township 13 North of the base line, and range 29 east of New Mexico, principal meridian, running from said initial point six miles, eighteen chains and twenty-two links, thence east twelve miles thirty-six chains and forty-four links; thence west twelve miles, thirty-six chains and forty-four links; thence north six miles, eighteen chains and twenty-two links to the place of beginning, containing ninety-nine thousand, two hundred and eighty-nine acres and thirty-nine hundredths of an acre more or less.

Also Location No. 3 situate in the Territory of Arizona formerly Dona Ana County, New Mexico, and described as follows, to wit: Commencing at a point one mile and a half from the Salero Mountain,

in a direction North forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links, thence south twelve miles, thirty-six chains and forty-four links; thence east twelve miles, thirty-six chains and forty-four links; thence north twelve miles, thirty-six chains and forty-four links to the place of beginning, containing ninety-nine thousand two hundred and eighty-nine acres and thirty-nine hundredths of an acre, more or less. Also Location No. 4, situate in Costilla County, Colorado Territory, (now the State of Colorado, formerly in Taos County, New Mexico, known and described as follows, to wit: Beginning at a point on the eastern edge of the San Luis Valley, where the thirty-eighth degree of latitude crosses the dividing line of the plain and mountain, thence east along said parallel of latitude four and one-half miles, thence south at a right angle to said parallel of latitude twelve and one-half miles, thence west at a right angle, twelve and one-half miles, thence north at a right angle, twelve and one-half miles to the aforesaid parallel of latitude, thence east with said parallel of latitude eight miles, to the place of beginning; containing ninety-nine thousand, two hundred and eighty-nine acres and thirty-nine hundredths of an acre, more or less.

Also Location No. 5, made under act of Congress of June 11th, 1864. The following tracts of land situate about fifty miles East of the Colorado River, on the trail from Fort Mohave to Prescott, beginning at the head of Francis Creek, at a certain monu-

ment erected by John Moss on his trail from Fort Mohave to Prescott, in the year 1364, near the large black or burnt mountain, said Francis Creek being one of the tributaries of Bill Williams Fork. Commencing at said monument for the center of the West line, running from said center North six miles and eighteen 22/100 chains, thence East twelve miles and 36 44/100 chains; thence south twelve miles and 36 44/100 chains, thence West twelve miles, and 36 44/100 chains, thence North six miles, and 18 22/100 chains to the place of beginning at said monument. Together with the undivided two thirds of all and singular the tenements, [237] hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits to the undivided two-thirds parts thereof. To Have and to Hold All and singular the undivided two-third parts thereof of the above mentioned and described premises.

Together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever. And the said D. W. Bouldin, party of the second part agrees hereby and hereto in further consideration of the conveyance, that he will use the greatest diligence that may be in his power, without interfering with his other business affairs, to prosecute to a final settlement and adjudication of the title to said Rancho Las Vegas, or the title to any lands granted or allowed, by the United States to be taken in lieu of said Rancho Las Vegas as herein-before described, at his own individual expense

without further costs or charges to either or the whole of us whose names are subscribed hereto as parties of the first part, the said Bouldin hereby agreeing that he will pay all expenses to lawyers, courts fees and whatever else may be necessary to the final adjudication or settlement of said title without any cost whatsoever to us or either of us. And the parties of the first part whose names are subscribed hereto do hereby nominate, constitute and appoint the said D. W. Bouldin our true and lawful agent and attorney, irrevocably, to take possession of the whole of said Rancho Las Vegas or any part or parcel, or any lands granted by the U. S. Government in lieu thereof, as hereinbefore described, to receive and receipt for the rents that may be due, for the use and occupation of said lands by any person or persons, using or having used, occupying or having occupied the said Ranch Las Vegas or any part or parcel thereof, and to sell, mortgage or lease the said Rancho Las Vegas, or any part and parcel thereof, for such sum or sums, price or prices, and upon such term or terms as he may deem proper and fit to do; and to execute and deliver all necessary deeds of conveyance, mortgages or leases to receive the purchase money, interests or rents for the same, as fully and to all intents and purposes, as we or either of us might or could do if personally present. Hereby ratifying and confirming all and singular the acts and deeds of our said agent and attorney D. W. Bouldin, lawfully done or to be done, in and about the premises, as fully and to all intents and purposes as we or either or all of us might or could do were

we personally present.

In Witness Whereof, we the said parties of the first and second parts have hereunto set our hands and seals. The words "or any lands granted by the U. S. Government in lieu" were interlined over the twenty-third line on the sixth page before signing and execution.

D. W. BOULDIN, (Seal)  
Party of the 2d Part.

Parties of the first part as follows:

His  
RAFAEL X PRADA (Seal)  
Mark  
His  
DOLORES X BACA DE PARADO. (Seal)  
Mark [238]

Witness to the above signatures:

JESUS M. BACA.  
MIGUEL BACA.  
NEPOMUCENO BACA.  
APOLONIA BACA DE ADAMSON.  
JACINTO BERREYESA.  
FELIPA DE BACA BERREYESA.  
PATRICIO BACA.  
FRANCISCO BACA.

Acknowledged in various California counties and recorded in Pima County, March 25, 1885.

#### **Defendants Wise Exhibit 15.**

Defendants Wise offered in evidence a deed or instrument from Maria Estefana Gorduna and others to David W. Bouldin, duly acknowledged and recorded on the 25th day of March, 1885, in Pima

County, Arizona, in the words and figures following, unnecessary parts thereof being omitted, to wit:

“THIS INDENTURE, made the fourteenth day of January, A. D. 1875, between the parties whose names are subscribed to this instrument of writing as parties of the first part of the State of California, and D. W. Bouldin, party of the second part, of the State of Missouri, Witnesseth: That the said parties of the first part, for and in consideration of the sum of one Dollar to them in hand paid by the said Bouldin, party of the second part, and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged; and the further consideration as hereinafter expressed have remised, released and quitclaimed and do by these presents remise, release and quitclaim unto the said D. W. Bouldin, party of the second part, and to his heirs and assigns forever, the undivided two thirds of all our right, title and interest in and to the following described tract or parcel of land, to wit: Being situated, lying and being about twenty-five (25) leagues from the City of Santa Fe in the State or Territory of [239] New Mexico (whichever it may be at this date) and was called, or was known and may be now known as the Ranch “Las Vegas,” and granted to Luis Maria Baca, a more perfect description of which reference is hereby made especially to the description made in said Grant, the petition or papers in connection therewith, together with the undivided two thirds of any lands that may have been, or may be granted by the United States Government, to Luis Maria Baca, or his heirs, in lieu

of the "Las Vegas" Grant, or otherwise, it being understood by us, at this time, that the Congress of the United States by special Acts have granted other lands in lieu of the said "Las Vegas" grant, divided into five (5) different parts or parcels and described as follows, the same being in accordance with the description as taken from the Surveyor General's Office at Santa Fe New Mexico, to wit. . . .

Also Location No. 3, situate in the Territory of Arizona, formerly in Dona Ana County, New Mexico, and described as follows, to wit: Commencing at a point one mile and a half from the Salero mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point West twelve miles, thirty-six chains and forty-four links; thence south twelve miles, thirty-six chains and forty-four links; thence east twelve miles, thirty-six chains and forty-four links; thence north twelve miles, thirty-six chains and forty-four links, to the place of beginning, containing ninety-nine thousand, two hundred and eighty-nine acres and thirty-nine hundredths of an acre more or less. . . .

Together with the undivided two thirds of all and singular the tenements, hereditaments and appurte- nances thereunto belonging or in anywise appertain- ing, and the reversion and reversions, remainder and remainders, rents, issues and profits to the undi- vided two thirds parts thereof. [240]

To have and to hold all and singular the undivided two thirds parts thereof of the above mentioned and described premises together with the appurte-

nances, unto the said party of the second part, and to his heirs and assigns forever; and the said D. W. Bouldin, party of the second part agrees hereby and hereto, in further consideration of the conveyance hereinbefore expressed, that he will use the greatest diligence that may be in his power, without interfering with his other business affairs to prosecute to a final settlement and adjudication of the title to said Rancho "Las Vegas" or the title to any lands granted or allowed by the United States, to be taken in lieu of said Rancho "Las Vegas," as hereinbefore described, at his own individual expense, without further costs or charges to either, or the whole of us, whose names are subscribed hereto as parties of the first part, the said Bouldin hereby agreeing that he will pay all expenses to lawyers, courts fees and whatever else may be necessary to the final adjudication or settlement of said title, without any cost whatsoever to us or either of us. And the parties of the first part whose names are subscribed hereto do hereby nominate, constitute and appoint the said D. W. Bouldin, our true and lawful agent and attorney irrevocably to take possession of the said lands hereinbefore described, to receive and receipt for the rents that may be due for the use and occupation of said land, by any person or persons using or having used, occupying or having occupied the said land, and to sell or lease the said land; to execute all necessary deeds of conveyance, or of lease, to receive the purchase money, or rents for the same, as fully and to all intents and purposes, as we or either of us, might or could do if personally present, hereby rati-

fying and confirming all and singular the acts and deeds of our said [241] agent and attorney D. W. Bouldin, lawfully done or to be done in and about the premises, as fully as and to all intents and purposes, as we, or either of us could do, were we personally present.

In Witness Whereof, we the parties of the first part and second part have hereunto set our hands and seals.

D. W. BOULDIN, (Seal)  
Party and part.

Parties of the first part as follows:

MARIA ESTEFANA GORDUNA,  
Late wife of Manuel Baca, deceased, the son of Miguel Baca, deceased who was the son of Luis Maria Baca, deceased.

Her  
X (Seal)  
Mark

Witness:

H. B. BLAKE.

Her

JESUS MARIA X BACA, (Seal)  
Mark

Son of Jose Antonio Baca, deceased, the son of Luis Maria Baca, deceased.

Her  
INES X BACA, (Seal)  
Mark

Daughter of Jesus Maria Baca, son of Luis Maria Baca, deceased.

His  
NEPONUCENO X BACA (Seal)  
Mark

Son of Juan Manuel Baca, deceased.

MANUEL BACA, (Seal)

Son of Maria de Jesus Baca, daughter of Juan Manuel Baca, deceased.

JUAN BACA, (Seal)

Son of Maria de Jesus Baca, deceased, daughter of Juan Manuel Baca, deceased."

To the introduction in evidence of said instrument Mr. Kingan, of counsel for plaintiffs, said:

"If the Court please, the burden is upon these people who did not get the legal title and could not have gotten the legal title, because it passed in 1870, the burden is upon them before the instrument is admissible to show that they were innocent purchasers for value. The title having passed in [242] 1870 there wasn't anything left to convey, and the only way they could get anything was by recordation and being innocent purchasers for value, which they must prove, and which hasn't even been alleged in this case.

The COURT.—Well, I will let it in subject to the objection.

#### **Defendants Wise Exhibit 16.**

Defendants Wise then offered in evidence a deed or instrument in words and figures following, the nature of the case requiring that it be printed in full:

"THIS INDENTURE, made the thirtieth day of September, A. D., one thousand eight hundred and eighty-four, between John Watts of the County of

Santa Fe, in the Territory of New Mexico, in his own proper person and J. Howe Watts, of the County of Grant, Territory of Arizona, and Elizabeth A. Watts, Mary A. Wardwell, Atwater Wardwell and his wife Louise Wardwell and Albert L. Bancroft and his wife Francis A. Bancroft, of the City of San Francisco, in the State of California, all of whom are heirs at law of John S. Watts deceased, parties of the first part, and David W. Bouldin, of the County of Pettis in the State of Missouri, party of the second part, Witnesseth, that the parties of the first part, for and in consideration of the sum of One dollar to each and every one of them in hand paid by the party of the second part, the receipt whereof is hereby, by each and every one of them respectively acknowledged, and for the further consideration, covenants and agreements to be performed by the party of the second part, as herein-after mentioned and for the purpose of compromising and settling the claims of title between the parties of the first and second part, and of perfecting and quieting the title to the lands hereinafter described, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said party of the second part and to his heirs and assigns forever, all the undivided two-thirds ( $\frac{2}{3}$ ) of all our right, title and interest of, in and to the following described tracts or parcels of land, to wit: Location No. 2, which was duly located in the office of the Surveyor-General of the Territory of New Mexico, under and by virtue and in accordance with the provisions of the 6th Section of an Act of Con-

gress passed June 21st, 1860, entitled "An Act to confirm certain private land claims in New Mexico," and found in Volume 12, page 71 [243] of the United States Statutes at large, said location having heretofore been duly surveyed and returned to the Surveyor-General's office of New Mexico, and duly approved by said Surveyor-General and is described as follows: Situated on the Canadian or Red River in the Territory of New Mexico, beginning at the corner to Sections 21, 22, 27 and 28 in Township 13 North of the base line, and range 29 east of New Mexico principal meridian running from said initial point six miles eighteen chains and twenty-two links, thence east twelve miles, thirty-six chains and forty-four links, thence south twelve miles, thirty-six chains and forty-four links, thence west twelve miles, thirty-six chains and forty-four links, thence north twelve miles, thirty-six chains and forty-four links to the place of beginning containing ninety-nine thousand two hundred and eighty-nine acres and thirty-nine hundredths of an acre, more or less. Also Location No. 3, which was located under and by virtue of the aforesaid 6th section of an Act of Congress passed June 21, 1860. Said location was heretofore duly surveyed in accordance with the provisions of said Act and the field notes returned to the proper office but the Surveyor-General disapproved the same, as being located on mineral lands. Said location is described as follows: Situated in the Territory of Arizona, formerly in Dona Ana County, New Mexico. Beginning at a point one mile and a half from the Salero Mountain, in a direction north

forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links, thence south twelve miles, thirty-six chains and forty-four links, thence east twelve miles, thirty-six chains and forty-four links, thence north twelve miles, thirty-six chains and forty-four links to the place of beginning, containing ninety-nine thousand two hundred and eighty-nine acres and thirty-nine hundredths of an acre more or less.

Also Location No. 4, which was also duly located and surveyed under and by virtue of the aforesaid 6th section of an act of Congress, passed June 21st, 1860, and the survey duly returned and approved by the Surveyor-General of New Mexico, and is described as follows: Situated in Costillo County, Colorado Territory (now the state of Colorado) formerly in Taos County, New Mexico. Beginning at a point on the Eastern edge of the San Luis Valley where the thirty-eight degree of latitude crosses the dividing line of the plain and mountain, thence east along said parallel of latitude four and one-half miles, thence south at a right angle, twelve and one-half miles, thence north at a right angle twelve and one-half miles to the aforesaid parallel of latitude, thence East with said parallel of latitude, eight miles to the place of beginning, containing ninety-nine thousand two hundred and eighty-nine acres and thirty-nine hundredths of an acre more or less. Also the grant or concession of land made by the Government of Spain to Louis Maria Baca known as the "Rancho Las Vegas," situated about

25 leagues from the City of Santa Fe, and upon which the City of Las Vegas in the Territory of New Mexico is now situated, for a more particular description of which reference is made to said Grant, and the petition and papers connected therewith.  
[244]

To Have and to Hold, all and singular the undivided two-thirds parts of the above-described land, together with the undivided two-thirds of all and singular the rights, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, profits and issues to the undivided two-thirds parts thereof. It being understood and agreed that this is a quitclaim title and that the parties of the first part are not to be responsible to the party of the second part for the failure of title or any part thereof. And it being further understood, covenanted and agreed, that if in the settlement of the title to the above-described premises with other claimants to said lands the parties of the first part should become entitled to moneys or other property in lieu of said lands or any part thereof by reason of any sale or other transaction made by their ancestor John S. Watts deceased, then and in that event the two-thirds part of said money or other property is hereby conveyed and assigned to the party of the second part. And also if in perfecting the title to Location No. 3, above-described other land or lands Certificates should be granted by the U. S. Government in lieu thereof then and in that event the parties of the first part hereby bargain,

sell, grant and convey to the party of the second part, an undivided two-thirds of such other lands or land certificates as may be received by them in lieu of said lands as aforesaid. And the said David W. Bouldin party of the second part, hereby covenants and agrees with the parties of the first part in further consideration of this conveyance, that he will use the greatest diligence that may be in his power without interfering with his other business affairs to prosecute to a final settlement and adjudication all conflicting claims and titles to the above-described lands or all claims arising out of and due from any sale of said lands heretofore made by the said John S. Watts deceased, and also to the perfecting of the title to location No. 3, above-described from the Government of the United States or acquiring other lands or land certificates in lieu thereof if the same can be recovered or procured from the Government of the United States at his own individual expense and without futher cost or charges to the parties of the first part, or any of them; the said D. W. Bouldin hereby agreeing that he will pay all expenses to lawyers, all court fees and all other expenses incurred or to be incurred in and about the business, and will do whatever else may be necessary to the final adjudication or settlement of said title without any cost whatever to the parties of the first part. And upon the final and complete settlement of the titles to said lands, and all matters connected therewith, the parties of the first part are to have, own and possess in fee an undivided one third of the net lands recovered and one undivided one-third of the land certificates

obtained, and an undivided one-third of all moneys and other property recovered and secured by the party of the second part, net. And the parties of the first part do hereby nominate constitute and appoint the said David W. Bouldin our true and lawful agent and attorney in fact, to take possession of the [245] whole of the above-described lands or any part or parcel thereof, or any lands or land certificates granted in lieu thereof, or any money or other property in lieu thereof, to receive and receipt for the rents that may be due for the use and occupation of said lands and to compromise, sell, mortgage or lease said above-described lands, or any part thereof, for such sums, price and prices as he may deem for the best interest of the parties hereto, and to execute and deliver all necessary deeds of conveyance, mortgages or leases, to receive the purchase money thereof, and fully to do and perform all and everything whatsoever requisite and necessary to be done in and about the premises as fully as we ourselves could do if personally present, with full power of substitution and revocation hereby ratifying and confirming all that our said attorney or his substitutes shall lawfully do or cause to be done in the premises by virtue hereof.

In Witness Whereof the parties of the first part and second part have hereunto set their hands and seals the day and date above written.

JOHN WATTS. (Seal)

ELIZABETH A. WATTS, (Seal)

By Attorney in Fact,

JOHN WATTS. (Seal)

FANNY A. BANCROFT, (Seal)  
By Attorney in Fact,

JOHN WATTS. (Seal)

MARY A. WARDWELL, (Seal)  
By Attorney in Fact,

JOHN WATTS. (Seal)

LOUISE WARDWELL, (Seal)  
By Attorney in Fact,

JOHN WATTS. (Seal)

J. HOWE WATTS, (Seal)  
By Attorney in Fact,

JOHN WATTS. (Seal)

A. L. BANCROFT, (Seal)  
By Attorney in Fact,

JOHN WATTS. (Seal)

ATWATER WARDWELL, (Seal)  
By Attorney in Fact,

JOHN WATTS. (Seal)

DAVID W. BOULDIN.

Signed, sealed and delivered in presence of

B. H. DAVIS,  
DAVID K. OSBORN.

Recorder's Office, Tucson, Pima Co., A. T. Filed  
and recorded at request of Wells Fargo & Co., 25th  
March, A. D. 1885 at 3:45 P. M., in Book 13, Deeds  
of Real Estate, Pages 13 to 18 inclusive.

A. B. SAMPSON,  
County Recorder." [246]

Territory of New Mexico,  
County of Santa Fe.

I, John Gray, Clerk of the Probate Court and ex-officio Recorder in and for the County of Santa Fe, in the Territory of New Mexico, certify that the foregoing instrument was filed in my office for record on the 24th day of April, A. D., 1885, at nine o'clock A. M., and the same is duly recorded in book "N" the Records of Deeds of said county of Santa Fe, on pages 86, 87, 88, 89, 90 and 91. In Witness Whereof I have hereunto set my hand and seal this 24th day of April, A. D., 1885.

[Seal] JOHN GRAY,  
Clerk and Ex-officio Recorder Santa Fe County, Ter-  
ritory of New Mexico, per M. Garcia, D. C.

Territory of Arizona,  
County of Pima.

Before me, Frank P. Clark, clerk of the court of El Paso County, State of Texas, it being a court of record having a seal, on this the 14th day of April, A. D., 1888, personally appeared R. H. Davis who is personally known to me to be the person whose name is subscribed to the within conveyance as a witness thereto, and after being duly sworn by me stated on oath that John Watts whose name is subscribed to the within conveyance as a party thereto and as the attorney in fact of the other grantors, to wit: Elizabeth A. Wise, Fanny A. Bancroft, Mary A. Wardwell, Louise Wardwell, J. Howe Watts, A. L. Bancroft, and Atwater Wardwell, is the person described in and who executed said deed for himself, and as

attorney in fact for the other grantors therein, that he saw the said John Watts subscribe said conveyance for himself and as attorney in fact for the other aforesaid grantors, on the day of its date, [247] and that the said R. H. Davis and the other subscribing *witness* subscribed their names thereto as subscribing witnesses thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said county court of El Paso County, State of Texas, on this the 14th day of April, 1888, at 2:30 P. M.

[Seal] FRANK P. CLARK,

Clerk County Court El Paso County, Texas.

Filed and recorded at request of D. W. Bouldin, 18th April, A. D., 1888, at 2:30 P. M.

A. B. SAMPSON,

County Recorder.

Santa Cruz Development Company objected to the admission of said paper for the following reasons and upon the following grounds: [248]

First, that it is not a deed of conveyance but an executory contract; second, that there is no proof recited in the deed of any authority in John Watts to execute the paper in behalf of Elizabeth A. Watts, his mother, in behalf of J. Howe Watts, his brother, or in behalf of his sisters, Mary A. Wardwell and Louise Wardwell and Fanny A. Bancroft. Third, that the deposition taken by Mr. Franklin of John Watts entirely negatives any authority in him to execute this paper in behalf of his mother, his brother and his sisters. Fourth, that there is no evidence of any authority in John Watts and any

possible presumption is negatived by the deposition of John Watts that there was any power of attorney in writing and acknowledged, as then required by the laws of the State of Arizona.

The COURT.—The objection is overruled for the present. The paper is received subject to the objection.

Santa Cruz Development Company noted an exception to said ruling.

Plaintiffs objected to the introduction in evidence of said paper at the present time for the reason that the conveyance of 1870 from John Watts, the father of all of these heirs, conveyed the title to Christopher E. Hawley, and that, therefore, at the time of the execution of this paper in 1884, the heirs of John S. Watts had no title and nothing to convey. Therefore, under the present avowals, under the condition of this case as it now stands this paper is inadmissible as against the plaintiffs.

The COURT.—The same ruling and exception allowed plaintiff. [249]

#### **Defendants Wise Exhibit 17.**

Defendants Wise then offered in evidence certified copy of the first record of the instrument from John Watts and others to David W. Bouldin, of date September 30, 1884, same as Defendants Wise Exhibit 16, without acknowledgment, heretofore printed in full.

Santa Cruz Development Company and plaintiffs objected to the introduction of said instrument on the grounds heretofore set forth to the introduction of Defendants Wise Exhibit 16, and made the fur-

ther objection that the paper in question is not acknowledged for admission in evidence according to the laws of Arizona; that the paper was not entitled to record not being acknowledged, and next, that there is no proof, and as this is an exemplified copy of an unacknowledged paper it requires proof of signature to papers.

The paper was received subject to objection and marked Defendants Wise Exhibit 17.

#### **Testimony of John Watts.**

Defendant Joseph E. Wise then introduced in evidence the deposition of JOHN WATTS which was duly taken and duly returned to this Court wherein said John Watts was duly sworn and examined as a witness in behalf of defendant Joseph E. Wise, and in the said deposition testified as follows:

#### **Direct Examination.**

My name is John Watts, age 74 years, residence Newton, Kansas. I have lived in Newton, Kansas for about 21 years. For about 20 years I was a banker, about 24 years in Government service as a National Bank Examiner, National Bank Special and [250] National Bank Receiver. John S. Watts was my father; he is dead, he died in Bloomington, Indiana on June 11th, 1876. He left surviving him a wife, my mother, Elizabeth A. Watts, he also left surviving him besides myself, my only brother, J. Howe Watts, three sisters, Mary A. Wardwell, who subsequently married W. V. B. Wardwell, Louise Watts, who subsequently married Atwater Wardwell, and Frances A. Watts, who sub-

(Testimony of John Watts.)

sequently married A. L. Bancroft. There were no deceased children of my father at the time of his death. At the present time my youngest sister, Louise Wardwell, is dead. She died in Berkeley, California about ten years ago. My deceased sister, Louise Wardwell, left her surviving one son, Ralph W. Wardwell, present residence Bakersfield, California. The husband of Louise Wardwell is not living; he died about twenty years ago. My mother Elizabeth A. Watts is dead; she died in Berkeley, May 23, 1893. My father John S. Watts was not married more than once.

I am the same John Watts, who, on or about 30th day of September, 1884, executed to one David W. Bouldin, for myself individually, and as attorney in fact for Elizabeth A. Watts, Frances A. Bancroft, Mary A. Wardwell, Louise Wardwell, J. Howe Watts, Albert L. Bancroft and Atwater Wardwell a certain instrument dated the 30th day of September, 1884, purporting to remise, release and quitclaim to the said David W. Bouldin, certain lands therein described, said instrument having been recorded at pages 13 to 18 inclusive in book 13 of deeds of Real Estate, in the office of the county recorder of Pima County, then Territory of Arizona. There is presented to me a certified copy of this instrument for identification; I think it is a correct copy.

(The notary taking the deposition was requested to attach [251] to and file with the testimony and deposition of John Watts this certified copy of said instrument just above referred to and mark the same

(Testimony of John Watts.)

Defendant Joseph E. Wise Exhibit "A" and the same was annexed to the deposition and is the same as Defendants Wise Exhibit 16.)

Question.—Did the said Elizabeth A. Watts, Fanny A. Bancroft, Mary A. Wardwell, Louise Wardwell, J. Howe Watts, A. L. Bancroft and Atwater Wardwell, on the said 30th day of September, 1884, or at any time prior thereto, execute and deliver, or cause to be delivered to you, any instrument in writing, a power of attorney, authorizing you as their attorney in fact or agent to execute said instrument exhibit "A."

Objected to by the Santa Cruz Development Company as incompetent, immaterial and irrelevant; as not the best evidence and as calling for a conclusion and as asking the witness to testify to the contents of a written instrument.

Evidence received subject to the objection without waiving any rights.

WITNESS.—Yes, I am sure that I had authority to represent them, but whether that was a formal power of attorney or letter of instructions I do not now remember.

Question. Do you now have or have you been able to find any such power of attorney or any other writing or instrument, letters or otherwise, from said parties or any of them, authorizing you to act as their attorney in fact in said matter.

A. No, sir.

WITNESS.—It is possible that there may be some authority among the papers that I have, but so

(Testimony of John Watts.)

far I have been unable to find them. I have looked carefully therefor since notified that my deposition would be taken, but so far have been unable to find them. It is doubtful whether I could find any as a [252] large number of the papers are not in my possession. I was served with the subpoena *duces tecum* commanding me to appear at this time and place and to bring with me any power of attorney or any other instrument from said parties authorizing me to execute the instrument in question (instrument of September 30th, 1884). It was served on me on October 20th, 1914, at Newton, Kansas. Since the service of said subpoena I have made diligent search and endeavored to find any power of attorney or other instrument in writing and any letters in writing from said parties or any of them, which designate me as their agent or attorney in fact to act for them in the matter of the execution of said instrument (the instrument of September 30th 1884) or that gave me authority to act for said parties or any of them, as their agent or attorney in any capacity, and found only copies of two powers of attorney made in 1894, ten years after the instrument in question.

Question. What is your recollection as to whether or not the power of attorney or powers of attorney or other instruments in writing from the members of your family as shown by the instrument of September 30th, 1884, was all in one instrument or in two instruments.

Objected to by Santa Cruz Development Company

(Testimony of John Watts.)

as incompetent, irrelevant, immaterial, and as calling for a conclusion and as asking the witness to testify to the contents of a written instrument executed over thirty years ago.

The COURT.—That may be received subject to the objection.

WITNESS.—My impression is that there were two instruments, one from my mother and sisters and the other from my brother.

Question.—Were these instruments formal powers of attorney signed and acknowledged before a notary? A. I couldn't say. [253]

Question.—What is your recollection as to whether one or both of the instruments were in the form of a letter or in the form of a formal power of attorney?

A. I am not sure on that point. My impression is that I had both. First letters and then powers executed.

Referring to the instruments which were designated as a power of attorney which were signed by my brother, J. Howe Watts, I cannot remember whether or not such instrument was acknowledged before a notary public. At that time I was familiar with the signature of my brother, J. Howe Watts. The instrument which I refer to as the power of attorney contained his genuine signature. I am not able at this time to state whether or not the power of attorney, that is, the formal instrument from my mother and all the other parties for whom I signed the instrument of September 30th, 1884, except my brother, was acknowledged before a notary or other

(Testimony of John Watts.)

officer authorized to take acknowledgments. I was familiar at that time with the signature of my mother and the names of the other parties to said power of attorney except that of Atwater Wardwell, husband of my sister, Louise Wardwell. Referring to the signatures of Elizabeth A. Watts, Fanny A. Bancroft, Mary A. Wardwell, Louise Wardwell and A. L. Bancroft on said instruments, those signatures were the genuine signatures of each of said parties.

Question. Do you remember the contents of the instrument from your brother, J. Howe Watts, as to whether or not the said instrument gave you authority to execute the instrument or deed, a certified copy of which is attached and marked as Defendants' Wise Exhibit "A."

A. I think it was a general power of attorney.

Question. I will ask you to state whether or not its terms [254] were such that it authorized you to make and execute and deliver any deed or deeds or contract or other conveyance affecting the premises described in the said instrument of Sept. 30th, 1884?

A. I so understood it.

Question. Is it now your recollection that said instrument did contain such authority?

A. It is my impression.

Question. Referring now to the power of attorney from your mother, Elizabeth A. Watts, Fanny A. Bancroft, Mary A. Wardwell, Louise Wardwell, A. L. Bancroft and Atwater Wardwell you may state whether such power of attorney gave you authority to make, enter into, execute and deliver such deed or

(Testimony of John Watts.)

deeds or contracts or conveyances or other instruments affecting the premises described in said instrument of Sept. 30th, 1884, if you saw it.

A. Yes, sir, that was its object.

WITNESS.—It is my recollection that such instrument contained such authority the power of attorney was general in its terms. I had several letters from the parties whose names I signed to the instrument of Sept. 30th, 1884 bearing upon the question of my authority to make any contract or deed or conveyance on behalf of said parties concerning the premises described in said instrument of Sept. 30th, 1884; I had several such letters asking me to dispose of any and all interests that I could find in which the heirs were interested. I received no letters from A. L. Bancroft or Atwater Wardwell. I received a few from my mother and several from my three sisters and my brother. I do not now have the said letters or copies of them. I have made a general examination of my letters and records pertaining to this matter but have found nothing that I supposed was material. I have not found any letter or letters or other instruments from any of said parties whose names I signed to said instrument of Sept. 30th, 1884, [255] which in any manner gave me any authority whatever in reference to the settling of my father's estate or the making of any deed or deeds or conveyances or contracts affecting the premises described in the instrument of Sept. 30th, 1884. The power of attorney from my brother, J. Howe Watts and the power of attorney from my mother

(Testimony of John Watts.)

and the other parties whose names I signed to the instrument of Sept. 30th, 1884 and the letters which I have referred to were signed and were received by me prior to the execution of said instrument of the 30th day of Sept., 1884.

Question. I will ask you to state whether or not you, at any time subsequent to the execution of said instrument of Sept. 30th, 1884, made known to any or all of the parties whose names you signed to said instrument, the nature of the instrument which you had executed for them as their attorney in fact?

Mr. KINGAN.—We understand that all this evidence as against the plaintiffs is going in subject to objection.

The COURT.—Yes.

Mr. JOSEPH W. BAILEY.—You mean your general objection that in 1884 the Watts family had nothing to convey or to make a contract about with anyone; is that it?

Mr. KINGAN.—Or for any other reason?

Mr. JOSEPH W. BAILEY.—I understand that it is going in subject to any objection we may make.

The COURT.—I understand that you are objecting to this line of testimony on the theory that at this time these grantors had nothing to convey, and that objection is in the record. If you have any specific objections you should state them at the conclusion of the reading of this deposition.

To the question above set forth the witness answered: Yes, sir. [256]

WITNESS.—I did not ever show the said instru-

(Testimony of John Watts.)

ments or a copy thereof, to said parties or any of them subsequent to the execution of the same. I did inform my mother Elizabeth A. Watts by letter of the execution of the instrument in question the instrument of September 30th, 1884. I do not remember whether it was by more than one letter. Before the contract was made I sent the letters of recommendation that Mr. David W. Bouldin had presented to me and also the terms of the contract that he wanted to make with me for the information of my mother, my sisters and brother. Afterwards I wrote nothing in regard to its terms additional. I submitted to them in substance the terms of this instrument of Sept. 30th, 1884, prior to its execution by me for them; it was not a copy, it was simply a statement of the terms and I sent it to them for their approval or rejection; that was prior to the execution of the said instrument signed by me for them. The instrument of Sept. 30th, 1884 was executed after I had received word from my mother and the other parties whose names I signed to said instrument, accepting the proposed terms. Generally speaking the instrument of Sept. 30th, 1884 was prepared in accordance with the terms and conditions as outlined to said parties whose names I signed; there were some modifications that I made to the contract; I regarded the changes or modifications as substantial or material, especially in regard to the expenses that would be necessary in the prosecution of the matter, in clearing up title; I wanted it absolutely and distinctly shown that none of the heirs were to

(Testimony of John Watts.)

bear any expense of any kind whatever. I think there were a few changes made other than those about expenses which I have designated but I do not recollect what they were; I would not have made them if I had not thought they were important. I do not remember any other changes that changed [257] the general terms or conditions or the nature of the transaction between the parties whose names I signed to said instrument of Sept. 30th, 1884 and David W. Bouldin. I will state that the instrument of Sept. 30th, 1884 was prepared generally to correspond with the terms and conditions that were submitted by me to my mother and other parties whose names I signed to said instrument prior to the time of the execution of the same; I will also state that the matter of closing the transaction, that is the instrument based upon the tentative arrangement between Bouldin and the parties whose names I signed to said instrument were left to me. I never received at any time in any manner any notification from any of the parties whose names I signed to said instrument in any way disaffirming my act in signing their name or names to said instrument; I never received any notice or protest from any of said parties in any manner protesting as to any of the terms or conditions that were included in said instrument after the submission of the terms to them. As far as I know the parties whose names I signed to said instrument and each of them were satisfied with the instrument. Subsequent to the execution and delivery of said instrument, as soon as it was com-

(Testimony of John Watts.)

pleted, I think I notified my mother, Elizabeth A. Watts and each one of the heirs that I had executed and delivered said instrument; that is now my recollection and I did not at that time or at any time since that time receive any protest from any of the parties. I have not found in my search for papers in this matter any letter or letters from any of said parties which in any manner tend to confirm my action in signing said instrument for said parties.

I am acquainted with one James W. Vroom of the city of New York. I did execute and deliver an instrument to said James W. Vroom affecting the tract in the Territory now state [258] of Arizona called or known as Baca Float No. 3 or Baca Location No. 3. On or about the 25th day of October, 1899, I did execute a certain quitclaim deed to said James W. Vroom, remising, releasing and quitclaiming to him an interest in and to said tract Baca Location No. 3 or Baca Float No. 3. I am the same John Watts who executed the instrument above referred to to James W. Vroom, as attorney in fact for Mary A. Wardwell, Louise Wardwell, Frances A. Bancroft and Albert L. Bancroft. I have known said James W. Vroom about twenty years. I met him before the execution of the quitclaim deed to him of October 25, 1899. I talked with him concerning this intended transaction. I informed him that I had prior to that time entered into, executed and delivered an instrument in reference to said described premises, the instrument to David W. Bouldin under date of Sept. 30th, 1884. I think I in-

(Testimony of John Watts.)

formed said Vroom of that fact both by letter and by conversation. I do not now have any letter by which I so informed him, nor a copy of such letter.

Question. Did you inform said Vroom any time prior to the execution of said quitclaim deed, dated October 25, 1899, that you had authority from Elizabeth A. Watts, Fanny A. Bancroft, Mary A. Wardwell, J. Howe Watts, A. L. Bancroft and Atwater Wardwell to execute for them as their attorney in fact, said instrument dated Sept. 30th, 1884 to the said David W. Bouldin?    A. Yes, sir.

Question. Did you inform James W. Vroom that you had authority from said parties and each of them in writing to execute said instrument of date Sept. 30th, 1884, to said David W. Bouldin?

Objected to by Santa Cruz Development Company as calling for a conclusion and the contents of a written instrument, and [259] its counsel suggested that the answer be taken subject to the objection.

The COURT.—Well, I think I shall hold that counsel have waived their objections if they do not call my attention to those they insist on at the close of the case. For instance, in this instance, I am prepared right now to overrule the objection because it just calls for a statement of fact.

Mr. BREVILLIER.—I will object to your Honor's ruling there and make a note of an exception.

The WITNESS.—Answered yes, sir.

The WITNESS.—This was prior to the execution of the quitclaim deed to Vroom; I do not remember

(Testimony of John Watts.)

whether I gave him such information in more than one letter. I did inform said Vroom of such facts in reference to the execution of the instrument to David W. Bouldin in one or more conversations that I had with him; those conversations were held in Newton; no one else was present.

I am the same John Watts to whom J. Howe Watts, Albert L. Bancroft, Frances A. Bancroft, Mary A. Wardwell and Louise Wardwell executed a quitclaim deed dated on or about the 26th day of October, 1899, remising, releasing and quitclaiming to me all their right, title and interest in and to the said tract commonly known as Baca Float No. 3. I wrote to my brother and sisters about the deed dated October 25, 1899, which, I for myself and as attorney in fact for them, executed to said James W. Vroom. I kept no copies of the letters nor have I the originals.

Question. Will you kindly explain fully why on October 25, 1899, you executed said deed to James W. Vroom as attorney in fact for said parties, and why shortly thereafter the said parties executed their quitclaim deed to you. [260]

The WITNESS.—It was for convenience in handling the property.

The WITNESS.—Referring again to the powers of attorney and letters which I have testified to pursuant to which I executed the instrument to David W. Bouldin under date of Sept. 30th, 1884, I will state that these papers were delivered to said James W. Vroom; I cannot give the exact date; it was be-

(Testimony of John Watts.)

fore the execution of the deed dated October 25, 1899. I could not state definitely what papers were delivered to said James W. Vroom; a great many. Mr. Vroom was here in Newton and examined personal papers of my father's relating to this subject and took such as he deemed material or important. My recollection is that he volunteered to place of record the powers of attorney from the parties in whose behalf I signed the said instrument to David W. Bouldin, dated Sept. 30th, 1884; that is he promised me that he would place such powers of attorney of record as were necessary. I could not say whether or not the fact that Mr. Vroom agreed to place said powers of attorney of record refreshed my recollection as to whether or not the same were acknowledged before some officer authorized to take such acknowledgments. I think all the papers were sent to Mr. Vroom before the execution of the deed to Vroom of October 25, 1899. It is hard to give a satisfactory answer to the question as to when I sent those papers to Mr. Vroom; Mr. Vroom was in Santa Fe, New Mexico, examining the title and requested me to send the papers there to him. I did so, a good sized trunk full and have sent no papers since I couldn't state positively as to whether I sent this trunk of papers to Mr. Vroom before or after the execution of the deed to Vroom which was dated October 25, 1899. Prior to 1899, Mr. Vroom had acted as my attorney for five years or more. [261]

#### Cross-examination.

Upon cross-examination by Mr. Brevillier, counsel

(Testimony of John Watts.)

for Santa Cruz Development Company, John Watts  
the witness testified as follows:

My father did not leave a will; my mother did not leave a will. In 1870 my father was a resident of Santa Fe, New Mexico, he had been a resident of the Territory of New Mexico for many years prior thereto; for over forty years. My father during his lifetime had been a delegate to Congress from New Mexico and also Justice and Chief Justice of the Supreme Court of New Mexico. I think that my father gave up his legal residence in New Mexico about 1873, somewhere about there; then he made his home in Bloomington, Indiana, and he was a resident of Bloomington Indiana continuously thereafter until the date of his death. My mother did not remarry after my father's death; and neither my father nor my mother were married more than once. My sister, Mrs. Bancroft, I have spoken of as Frances A. Bancroft, Fanny Bancroft, Fanny A. Bancroft and Fanny W. Bancroft. The date of my father's marriage to my mother was about 1836. My attention is directed to a deed recorded in the office of the recorder of Santa Cruz County, Arizona, on June 16, 1913 at 1:30 P. M. in book 7 of Deeds of Real Estate pages 261 et seq. As to the signatures there opposite the three words "Seal" I will state the first is mine and the other two are my wife's. I was married in 1880. I have been married only once. I think the recitals or statements of fact in that last named instrument are correct or approximately correct. After my father's death my mother lived in

(Testimony of John Watts.)

Berkeley, California and continued to be a resident there until the time of her death. At the time of my father's death I lived in [262] Santa Fe, New Mexico. I lived there over fifteen years after my father's death. Then I resided in Missouri for about one and one-half years and then came to Kansas and have been a resident of Kansas ever since. At the time of my father's death I think that my brother, J. Howe Watts, resided in Arizona, for a while he was a resident of Arizona, for a number of years he was a resident of Honduras, Central America, and in the mining business in Mexico and now resides in San Pedro, California. He has lived in San Pedro about a year and a half. He lived in Arizona about three or four years after my father's death; he lived in Central America about ten years; in Mexico between two and three years. Mary A. Wardwell at the time of my father's death resided in Berkeley, California, and she is still living in Oakland, California. Mrs. Louise Wardwell resided at the time of my father's death in Berkeley, California and resided there until the date of her death. Mrs. Bancroft resided at the time of my father's death in San Francisco, California. She has lived there ever since and is living there now.

Question. Referring to the paper of Sept. 30, 1884, known as the Joseph E. Wise Exhibit "A," did you ever get any money from David W. Bouldin for signing the paper.

Mr. Weldon M. Bailey and Mr. Franklin objected to the question as an attempt to vary the terms of a valid written instrument, which recites on its face

(Testimony of John Watts.)

a valuable consideration, also that it was incompetent, irrelevant and immaterial and not proper cross-examination.

The objection was sustained by the Court to which ruling counsel for Santa Cruz Development Company then and there duly excepted.

Counsel for Santa Cruz Development Company then asked [263] the Court to take the answer under Rule 46.

**THE COURT.**—The question and answer are both taken under Rule 46.

To the question the witness answered: No, sir.

The following questions were also asked and objected to by counsel for the Bouldins and for Joseph E. Wise on the grounds just above stated, and the objections thereto were sustained by the Court.

Counsel for Santa Cruz Development Company excepted then and there to the ruling of the Court; at his request said questions and answers were taken under equity rule 46 as follows:

#### **TESTIMONY TAKEN UNDER RULE 46.**

**Question by Mr. BREVILLIER.**—Did any of the other heirs get anything from Bouldin?

A. No, sir, not to my knowledge.

**Question.** You were the only one to participate in the transaction with Bouldin?

A. Yes, sir I was the only one.

#### **END OF TESTIMONY TAKEN UNDER RULE 46.**

Counsel for Santa Cruz Development Company then asked the witness the following questions:

(Testimony of John Watts.)

When you told your mother, brother and sisters about the proposed transaction with Bouldin, did you tell them that Bouldin wanted an absolute transfer or to be retained as attorney on a contingent fee.

To this question counsel for the Bouldins and counsel for Joseph E. Wise objected on the ground that what he told them couldn't bind either Bouldin nor his successor in interest; and on the further ground that this was not proper cross-examination for the reason that the witness never said that he told them anything. [264]

The COURT.—It may be received under the defendants Wise and Bouldin objections, and I will ask you to call my attention to it later.

Thereupon counsel for Joseph E. Wise duly excepted to the ruling of the Court.

To this question the witness answered: That was to be the understanding. It was agreed what he was to do and have a fee for his services.

Question. Did David W. Bouldin ever claim to you that he had an absolute two-thirds interest in the property in fee?

To this question counsel for Wise and counsel for Bouldin objected on the ground that it was immaterial whether he made any such claim or not, and not proper cross-examination and that it is an attempt to vary a valid written instrument by parole evidence.

The COURT.—You may proceed over the defendants' objections.

To which ruling of the Court the defendants Wise

(Testimony of John Watts.)  
and Bouldin then and there excepted.

(Witness answered:) No, sir.

Question. I show you an instrument in writing and ask you if you recognize the writing on the paper in question and the endorsements thereon.

A. David W. Bouldin's.

The WITNESS.—I am familiar with his signature; I have seen him write; that writing is David W. Bouldin's; I don't remember whether I received that by mail; the endorsements on the back are mine.

(The notary who took the deposition was requested by Mr. Brevillier to mark this "Exhibit 1" for identification, written on three sheets of paper and fastened together.) [265]

WITNESS.—My father was attorney for the Baca heirs for a number of years.

Question. Did you have any power of attorney or authority from your brother, sisters and mother or any of them, to transfer their interest or any part of Baca Float No. 3 to any person except in the nature of a sale. In other words, did you have any authority to make any conveyance of their interest, or any part thereof, without receiving a consideration therefor? A. No, sir.

WITNESS.—(Continuing.) That paper of September 30th, 1884, the contract with Bouldin, was executed in Santa Fe, New Mexico, or in El Paso, Texas, I am not sure which. I first became acquainted with David W. Bouldin shortly before this agreement was made. I did not have any business transaction with him before because he was an entire

(Testimony of John Watts.)

stranger. He came with letters of recommendation. Those letters stated that he was a good business man, conversant in land matters and a generally efficient man in business. He told us that he wished to represent me, my brother, mother and sisters with reference to Baca Float Nos. 3, 2 and 4.

Question. He told you that he was willing to act for you on a contingent basis and that was the understanding, and that unless he was successful in the matter he would get nothing?

A. He would get nothing, and would lose his time and expense.

WITNESS.—I saw Mr. Bouldin once afterwards in San Francisco about two years afterwards, in 1886 or 1887. I did not ask him at various times for a copy of that paper of Sept. 30th, 1884. (Witness' recollection was refreshed by being shown "Exhibit 1" for identification.) I did ask him for a copy of that paper. I had a good many communications with [266] my mother, my sisters and my brother with reference to various Baca Floats, and of deals with reference to them; and some of the letters and powers of attorney were with reference to other Floats than Baca No. 3. In 1884 I was acting informally in their behalf in closing up my father's estate, and I considered the matter as a family matter, in which the usual form and formalities applicable to business transactions among strangers were inapplicable. These powers of attorney and letters, etc., about which I have been interrogated covered a period of about twenty years.

(Testimony of John Watts.)

Question. And you cannot give the approximate date of any of them?

A. It is with difficulty that I can locate them.

WITNESS.—I would say that W. V. B. Wardwell died about twenty-five years ago.

WITNESS.—There were among the papers that I turned over to Mr. Vroom a lot of papers not applicable to Baca Float No. 3, a large number of them; they were odds and ends of my father's estate.

WITNESS.—My father was a man of wide acquaintance and a great reader. He was a member of the bar of New Mexico and he had quite a wide and varied experience as a lawyer and argued a few cases in the Supreme Court and was associated with eminent Eastern counsel in these cases. In 1870 my father had quite a wide familiarity with real estate forms and transactions; he had to my knowledge handled and drawn many deeds and other papers affecting real property.

WITNESS.—I do not recollect what was in that trunk of papers that I sent to Mr. Vroom; they were supposed to contain a large amount of his business letters, memoranda and copies; and particularly with reference to my father's own [267] correspondence and affairs while he was living. I think that when Mr. Vroom was here he went over all the papers with reference to Baca Float No. 3; I don't remember what he took away with him, he said he selected what was important. At that time there was considerable controversy in the Land Office Department and in the Interior Department with reference

(Testimony of John Watts.)

to Baca Float No. 3 and Mr. Vroom and myself were interested in securing favorable action from the Land Department and the question of conflicting titles among the various claimants to the ground I regarded as secondary, Mr. Vroom and myself at that time both regarded as of primary importance the securing of favorable action by the Land Department and the Interior Department and I think that most of the papers with reference to the Baca Float No. 3 which Mr. Vroom took or retained were with reference to the status of the title as against the Government.

Question. Did you ever tell your mother and your sisters and your brother or any of them that you had made an absolute conveyance or deed to David W. Bouldin.

A. Absolute conveyance? No, indeed.

Question. Did you ever regard the paper as a deed or conveyance?

Objected to by defendants Bouldin and Joseph E. Wise on the ground that it was absolutely immaterial how he regarded that paper.

Objection sustained and exception taken by the Santa Cruz Development Company and answer taken under Rule 46.

Answer: No.

The following questions were each and all objected to as immaterial and the objection thereto sustained by the [268] court, and each of said rulings were excepted to by Santa Cruz Development Company and all of said questions and answers were, at the

(Testimony of John Watts.)

request of Santa Cruz Development Company taken under Rule 46.

Question. Did Bouldin in your presence ever speak of it in that light? A. No.

Question. Did he always call it a contract?

A. Agreement or contract. Sometimes he would say "our agreement" and sometimes "our contract."

END OF TESTIMONY TAKEN UNDER  
RULE 46.

WITNESS.—In September, 1884, I and various other members of my family thought there was money coming to us from Baca Float No. 4 in Colorado. In a general way I was acquainted with the legal status of Baca Floats Numbers 2, 3 and 4, but not with the particular legal details or particular status. Neither my father nor my mother ever adopted any child or children.

The witness further testified on cross-examination as follows: I could not say whether the papers which Mr. Vroom agreed to record were papers other than the letters and powers of attorney and were only title deeds from the Baca heirs; he said he would record what was important and material. I turned over to him several title deeds which at that time had not been recorded. I never heard at all that any claim was made by David W. Bouldin or his grantees that the paper of September 30th, 1884, was a deed of conveyance until you stated it to me yesterday. On September 30th, 1884, David W. Bouldin had done no work for me, my mother, my brother, sisters, or any of them; I didn't know the man. [269]

(Testimony of John Watts.)

Redirect Examination of the Witness JOHN WATTS.

The witness JOHN WATTS on redirect examination further testified:

There was a dispute or disputes or questions as to the validity of this title to Baca Float No. 3 at the time and prior to the execution of this instrument of Sept. 30th, 1884; I do not know how much Mr. Bouldin did in attempting to clear up the title as provided in said instrument of Sept. 30th, 1884. I do not know how much money, if any, he spent in attempting to clear up the title. I do not know whether or not Mr. Bouldin did everything within his power that he agreed to do as contained in said instrument of Sept. 30th, 1884. I did not receive any consideration from Mr. Vroom for the deed of October 25, 1899; no money consideration; no property; nor did I receive any money or any property from Mr. Vroom for the conveyance of 1899, for or on behalf of any of the other heirs.

Recross-examination of JOHN WATTS.

On recross-examination by Mr. Brevillier the witness John Watts further testified: I executed two deeds to Mr. Vroom in 1913; I was paid money consideration for both of those deeds. Prior to October, 1899, Mr. Vroom had done considerable work for me and the heirs with reference to Baca Float No. 3, and other matters, and the deed to Vroom of October 25, 1899, was partially in consideration of those services.

At the time I entered in to the arrangement of

(Testimony of John Watts.)

Sept. 30th, 1884, with Bouldin he told me that he would clear up the situation for me and the heirs and it was reliance upon this statement that caused me to enter into this written contract with him. [270] Indeed, there was no reason at that time that I and the other heirs should make him a conveyance of a two-thirds interest in these Floats.

Redirect Examination of JOHN WATTS.

(By Counsel for JOSEPH E. WISE.)

Mr. Vroom paid to me all the consideration that was paid for the deed of February 3d, 1913, to James W. Vroom; no part of that consideration was paid by Mr. Vroom to any of the other heirs; the consideration was paid to them by me, to each of the heirs. It was paid for the entire interest in Baca Float No. 3.

Recross-examination of JOHN WATTS.

(By Counsel for Santa Cruz Development Company.)

In paying the money over to the heirs I acted as their agent or trustee and not in behalf of Mr. Vroom and the arrangement between the heirs and myself was something that no one knew about except them and myself and was the result of a family arrangement or family agreement which was purely private and known to no one except the members of the family.

Question. Why did you enter into the arrangement on September 30th, 1884, with Bouldin?

A. Because I believed from the representations he

(Testimony of John Watts.)

made that he would be able to quiet the title to the float.

Question. And relied upon these representations and his performance thereof and made the contract with him? A. Yes.

Question. Did you ever tell your mother, your sisters or your brother or any of them, that you had ever made any deed or conveyance to Mr. Bouldin?

A. I never did. [271]

Question. And you never so regarded the papers?

Objected to by Joseph E. Wise and Bouldins on the ground that it was immaterial how he regarded it.

Objection sustained and exception taken by Santa Cruz Development Company and question and answer taken under Rule 46.

Answer.—No.

The following question was also objected to by defendants Wise and Bouldins as immaterial and objection sustained. Exception taken by Santa Cruz Development Company and question and answer taken under Rule 46, to wit:

Question. And never heard any one speak of it in that light? A. No, sir.

Redirect Examination of JOHN WATTS.

(By Counsel for JOSEPH E. WISE.)

I have never seen the powers of attorney or other letters from my mother, Elizabeth A. Watts, or other parties whose names I signed to the instrument of Sept. 30th, 1884, since the same were given to Mr. Vroom; it looks most probable that Mr. Vroom would have them. I had such powers of attorney in my

(Testimony of John Watts.)

possession or under my control prior to the time that the papers in reference to the matter were delivered to Mr. Vroom and I don't think he ever returned to me either of the powers of attorney pursuant to which the instrument of Sept. 30th, 1884, was executed. I have no definite recollection of those two powers of attorney having been delivered to Mr. Vroom; I couldn't say positively that they were with other papers that were delivered to him; he did the sorting of papers himself. I authorized him to take all papers that might affect this Baca Float No. 3.

[272]

Question. As far as you know were the powers of attorney in question among the papers that he looked over or sorted?

A. I can hardly state that fact as I don't know what he took and what he didn't.

WITNESS.—I have never been able to find either of those papers since that time nor any of the letters concerning which I testified this morning.

Recross-examination of JOHN WATTS.

(By Counsel for SANTA CRUZ DEVELOPMENT COMPANY.)

WITNESS.—Before I turned over these papers to Mr. Vroom or gave him permission to look over them I had looked for some of those letters and powers of attorney several times and had been unable to find them.

Question. Well, then your inability to find those papers preceded your turning over the papers to Mr. Vroom, as well as his inspection of those papers?

(Testimony of John Watts.)

A. Well, some would precede and some would follow.

Question. Some of this authority that you relied on was contained in general letters that were written by your brother, J. Howe Watts, and your mother and sisters respectively, to you as purely a family or affectionate matter. A. Yes.

Question. Some of them being mostly family letters were destroyed by you? A. Yes.

WITNESS.—(Continuing.) So the authority that I spoke of was contained very largely in purely family letters from some member of the family to me dealing with purely family and personal incidents and these letters as a rule were destroyed after I had read and answered them.

I had a good many dealings with reference to my father's estate; I would hardly say that Baca Float No. 3 [273] was comparatively the most unimportant; there were some matters that I regarded as more important. I had powers of attorney and then letters that I spoke of to look into such and such matters in which the heirs were interested. All those letters and powers of attorney were mostly general in their nature and not at all specific. Some of the letters authorized me to close up my father's estate and to make contracts in reference to it.

In the course of my official duties as bank examiner and bank receiver I have moved about considerably from place to place and while I acted as bank receiver I have established a temporary residence for months at a time in places other than Newton,

(Testimony of John Watts.)

and in that way there has been some trouble with my papers. It is not likely that these letters and powers of attorney I spoke of are now reposing in the vaults of some defunct bank; they would be in my retained papers after I had settled with the bank, brought home in what are called retained papers. I have still a lot of the odd and ends of my father's papers.

Redirect Examination of JOHN WATTS.

(By Counsel for JOSEPH E. WISE.)

I had the powers of attorney from my mother and other parties for whom I signed the instrument of Sept. 30th, 1884, prior to the time that I took up the negotiations with Mr. Vroom and prior to the time that any of the papers were delivered to him. Up to that time they had not been lost or misplaced; they were among my other papers. [274]

Recross-examination of JOHN WATTS.

(By Mr. BREVILLIER, Counsel for SANTA CRUZ DEVELOPMENT COMPANY.)

Since that time I have moved about a great deal and taken papers with me.

Question. And you cannot state of your own knowledge whether or not Mr. Vroom ever got, secured or kept in his possession any of those letters or powers of attorney? A. I couldn't state.

Question. And any answer that you have made to the effect that he probably has the same is a surmise on your part or guess as to the probability?

A. Yes.

Demand was made by counsel for defendant Jos-

(Testimony of John Watts.)

eph E. Wise upon James W. Vroom, who it is admitted is president of the defendant Santa Cruz Development Company, that he produce the powers of attorney which the witness John Watts testified to as set forth in the foregoing deposition and testimony of said witness John Watts. To this demand James W. Vroom answered that he did not have the powers of attorney, or either of them, and never had the same or either of them, and never heard of said powers of attorney, although he once had in 1913 an informal letter, dated in 1894, signed by some of the heirs of John S. Watts, a copy of which had been exhibited by John Watts at the time of taking the deposition.

#### **Defendants Wise Exhibit 18.**

Defendants Wise introduced in evidence without objection certified copy of the record of a deed or instrument dated and acknowledged the 21st day of February, 1885, and recorded June 19, 1885, from David W. Bouldin to John Ireland and Wilbur H. King, which without the statement of parties *habendum* [275] signatures and acknowledgments, and omitting the description by courses and distances, which are those of the 1863 location, reads as follows:

“Witnesseth, that the party of the first part for and in consideration of the sum of two thousand dollars to him in hand paid by the parties of the second part, the receipt of which is hereby acknowledged, and for the further consideration of an additional two thousand dollars to be paid in the future

to the party of the first part by the parties of the second part, and evidenced by a promissory note duly signed by the said John Ireland and the said Wilbur H. King, bearing even date herewith for the said sum of two thousand dollars and payable to the said David W. Bouldin on the first day of September, 1885, and the further consideration, covenant and agreements to be performed by the parties of the second part, hereinafter mentioned in confirming and quieting title to the lands hereinafter described, has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said parties of the second part, and to their heirs and assigns forever, all and singular the undivided one-third of one-third of all right, title and interest owned, controlled and possessed by the party of the first part, of, in and to the following described tract or tracts or parcels of land, to wit, Location Number Three (3) being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the Sixth Section of an Act of Congress of the United States approved June 21st, 1860, entitled "An Act to confirm certain private land claims in New Mexico," and found in Volume twelve (12), page 72, of the United States statutes at large, by the heirs of Don Luis Maria Cabeza de Baca, the [276] title to said five tracts of land having been confirmed to the said heirs of Don Luis Maria Cabeza de Baca, by the above-named Act of the United States Congress approved June 21st, 1860. \* \* \* It is further understood to, by and between the parties of this indenture, that in per-

fecting the title or fixing the location of the above-described tract of land, known as Number three (3) of the Grant to the heirs and legal representatives of Don Luis Maria Cabeza de Baca, if other land or lands or land certificates shall be granted by the United States Government in lieu thereof, then, and in that event, the party of the first part hereby bargains, sells, grants and conveys to the parties of the second part, an undivided one-third of one-third of such other land or land certificates as may be received by him, the said David W. Bouldin, in lieu of said lands or any part thereof. \* \* \* It is further understood and agreed by the parties hereto that all necessary expenses incurred in locating all or any part of the above-described land, or in perfecting title, or obtaining other land or land certificates in lieu of said Location Number three (3) shall be borne by the parties hereto in proportion to their several interests."

#### **Defendants Wise Exhibit 19.**

Defendants Wise offered in evidence an exemplified copy of the judgment and all proceedings in a certain case in the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima, first entitled John Ireland and Wilbur H. King, plaintiffs, vs. David W. Bouldin, defendant, and later John Ireland and Wilbur H. King, plaintiffs, against Leo Goldschmidt, Administrator of David W. Bouldin, deceased, and also of certain proceedings under the [277] original title thereafter in the Superior Court of the State of Arizona, County of Pima, Counsel stated that said ex-

emplified copy contained a copy of all the papers and proceedings in that case except certain minute entries which are in the minute book in possession of the United States Court.

This exhibit is printed in the appendix.

Mr. Campbell, counsel for the defendants Bouldin, objected to the introduction in evidence of said instrument and to certain parts thereof, as follows:

We object to the judgment part of the record so far as the judgment undertakes to foreclose the attachment, and to order a sale of the property by the sheriff, upon the ground that the Court had no jurisdiction to enter that particular judgment, that the judgment is void because there was no waiver of recourse against other property of the decedent in the complaint, nor by any amendment thereto. And illustrating that, if I may just in a word or two, Mr. Bouldin died while this litigation was pending, Leo Goldschmidt was substituted as a party defendant as administrator, and it is against Leo Goldschmidt as administrator that the judgment was rendered. There are smaller errors in the judgment in that the property is misdescribed. The first course is thirty-six chains, forty-four links, and the other is thirty-six chains and thirty-four links. The notice of sale which is in these papers does not give notice that the sheriff will sell the attached interest but gives notice that he will sell the interest of defendant Goldschmidt, administrator and such interest as Bouldin had at the time of his death. The judgment directed the sale of such interest as Bouldin had at the date of the attachment some two

years previously. The return of the sale shows no valid levy was made under the execution and judgment. [278] It recites a levy upon the interest of Goldschmidt as administrator of the estate of Bouldin only. There is no levy here among these papers. The return of the sheriff shows, however, that he levied upon the interests of Leo Goldschmidt, as the administrator of David W. Bouldin, deceased, and nothing else. It also shows that he sold the interest of Leo Goldschmidt as administrator and nothing else. The return also shows the two courses east in a description of the property which is attempted to be according to the '63 location, and therefore, does not tie it to any place. We object to the papers that are tendered her as proceedings in the Superior Court of Pima County. The petition that is filed in the case is filed in the case of John Ireland and Wilbur H. King vs. David W. Bouldin, long before Bouldin had died and Goldschmidt was the defendant in the action.

Mr. FRANKLIN.—I did not catch that objection.

Mr. Campbell.—I say long before they filed their petition the style of the action in which you filed these papers had changed. It was no longer Ireland and King against Bouldin, but it was Ireland and King against Goldschmidt as administrator. The papers are all entitled as the case was when it was first filed in the District Court. We object also to the attempted order made in that case by the Superior Court of Pima County upon the ground that the Court had no jurisdiction, power or authority of any kind to make that or any other order; that it was an

*ex parte* proceeding upon which service was made upon no one and that the Court was wholly without authority to make the order directing the late sheriff, Nelson to execute a deed. We further object on the grounds that the Court had no power or authority to direct the sheriff of Pima County to convey land in Santa Cruz County, if it otherwise [279] would have had power in the premises. The description of the property as recited in the proceedings in the Superior Court is by reference to another deed—a deed recorded in book 41, at page 597. It is an attempted reference to the 1864 deed which was recorded in book 14 at page 597 of the county records. We object further to this—I don't know that it is a valid objection, of course if the 1870 deed conveyed the title from Watts to Hawley, Bouldin had no title in the '63 Location of two-thirds interest. He had conveyed everything he had to his sons long prior to the attachment proceedings, but he had conveyed according to the 1866 amendment, attempted amendment to the '63 Location and this attachment was sought upon the property as of the '63 Location, or '63 description. This is embodied in our objection that the Court had no jurisdiction to render judgment, to render the judgment that was rendered in the case foreclosing the attachment, and we call your attention to paragraph 797.

The COURT.—It may be received subject to the defendants' objection.

Mr. NOBLE.—If the Court please, may it be understood that we make the same objections without restating them?

The COURT.—Yes, and the same ruling.

**Defendants Wise Exhibit 20.**

Defendants Wise offered in evidence a certified copy of the minute entries of the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, in regard to the substitution of Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, as defendant in the suit of John Ireland and Wilbur [280] H. King vs. David W. Bouldin.

Counsel for Bouldins objected to the introduction thereof on the ground that it was immaterial. The same was received in evidence subject to the objection of counsel for Bouldins. This exhibit is printed in the appendix and made a part hereof.

**Defendants Wise Exhibit 21.**

Defendants Wise offered in evidence exemplified copy of the proceedings in the Probate Court in and for the county of Pima, Territory of Arizona, in the matter of the estate of David W. Bouldin, deceased, showing that the matter of the administration of that estate is still pending before the Superior Court of Pima County, State of Arizona; that Leo Goldschmidt still is administrator, never having been closed up. Mr. Campbell, of counsel for Bouldins, said: "Without making any specific objections to this paper, we add to our other objections something that we did not know before, and that is, that no service was made upon Leo Goldschmidt in this attempted proceeding in the Superior Court; that he was then the administrator, had never been discharged, and that this petition that was filed in the

Superior Court was never served upon Leo Goldschmidt.

The COURT.—The same ruling as before.

Said exhibit is set out in full in the appendix hereto and made a part hereof.

### **Defendants Wise Exhibit 22.**

Defendants Wise offered in evidence an exemplified copy of the Sheriff's Certificate of Sale, under the judgment and order of sale mentioned in Defendant Wise Exhibit 19. For convenience this exhibit is printed in full in the appendix hereto.

This instrument was objected to by defendants Bouldin on the ground of being immaterial, irrelevant and incompetent, and for the further reason that the sheriff's certificate of sale is—that he sold the property of Leo Goldschmidt, administrator, and not the property of Bouldin.

The COURT.—Received subject to objection.

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### **Defendants Wise Exhibit 23.**

Defendants Wise offered in evidence a deed from Lyman W. Wakefield, sheriff of the county of Pima, dated and acknowledged the 16th day of January, 1899, and recorded the 7th of February, 1899, to Wilbur H. King, under the judgment and sale aforesaid. This exhibit is printed in connection with exhibits 19, 20, 21 and 22 in the appendix.

Mr. CAMPBELL.—Said, being admitted to be invalid and void we object to it and object to its going in the record.

Mr. FRANKLIN.—This can be taken subject to the objection because it has reference to it—it con-

nects up with the next deed.

The COURT.—Very well, it may be received.

Mr. CAMPBELL.—We make some further objections, your Honor; that this deed does not purport to convey anything except such interest as Leo Goldschmidt, the administrator of the Bouldin Estate, had in the property, and recites that only the interest of Leo Goldschmidt was levied upon and that only the interest of Leo Goldschmidt as administrator was sold, and the order of the Court was to sell the interest that he had in March, 1893, and to sell the interest that David W. Bouldin had, and he sells or attempts to sell the interest of the administrator of David W. Bouldin in July, 1895. We further object to this and the other papers on the ground that the Court had no jurisdiction to render any judgment ordering the sheriff to sell the property.

#### **Defendants Wise Exhibit 24.**

Defendants Wise offered in evidence an exemplified copy of the record of a deed from Wilbur H. King to Joseph E. Wise dated and acknowledged the 24th day of April, 1907, and recorded [282] May 2, 1907, in Santa Cruz County, Arizona, which deed was admitted in evidence and is in words and figures following, to wit: [283]